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## WISCONSIN LEGISLATIVE COUNCIL

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### *ADMINISTRATIVE RULES PROCEDURES MANUAL*

- *Drafting Style and Format*
- *Promulgation Procedure*
- *Rules Review Procedure*

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December 2014

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## INTRODUCTION

The *Administrative Rules Procedures Manual* is prepared jointly by the Legislative Reference Bureau (LRB) and the Legislative Council Rules Clearinghouse (Rules Clearinghouse), pursuant to s. 227.15 (7), Stats. Its purpose is to provide agency personnel with information on the three basic aspects of administrative rule-making: drafting, promulgation, and legislative review. The electronic version of the Manual contains live links to the statutes, documents, and other items cited in the Manual.

**PART 1** of the Manual discusses the form and style of agency rule drafting which generally follows LRB's bill drafting style and format. PART 1 also contains the standards applied by the Rules Clearinghouse when reviewing proposed rules.

**PART 2** describes an agency's internal activities when it drafts and promulgates administrative rules. The rule-making procedures described in PART 2 follow the general procedures found in ch. 227, Stats. However, if an agency is subject to special statutory procedures, those procedures must be followed. PART 2 also contains information relating to filing deadlines for material published in the Wisconsin Administrative Register (Register).

**PART 3** sets forth the process of legislative review of administrative rules, including procedures for review of proposed rules by the Rules Clearinghouse, legislative standing committees, and the Joint Committee for Review of Administrative Rules (JCRAR). PART 3 also summarizes the statutes relating to review by JCRAR of existing rules.

The **APPENDIX** contains a flow chart of the rule promulgation process.

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## PART 1

### DRAFTING STYLE AND FORMAT

**1.01 Drafting style. (1) CLARITY.** The purpose of administrative rules is to supplement, implement, or interpret legislation. To the extent possible, rules are to adhere to the format and drafting style of bills prepared for the Legislature, as specified in this Manual. Draft administrative rules in concise simple sentences, using plain language that can be easily understood. Express ideas and concepts positively using the present tense and the active voice. Avoid Latin and other foreign terms. [s. 227.14 (1), Stats.]

**NOTE:** To provide additional guidance regarding legislative drafting style, the following excerpts from the LRB *Bill Drafting Manual* may be accessed from the electronic version of this Manual at: <http://docs.legis.wisconsin.gov/document/adminruleprocedures>:

General Rules for Drafting and Revising

Numbering of Sections

Gender Neutral Statutory Terms

Word Spelling Guide

**(2) MANDATORY AND PERMISSIVE ACTIONS.** Use the word “shall” to denote a mandatory or absolute duty or directive. Use the word “may” to denote an optional or permissive privilege, right, or grant of discretionary authority. Avoid use of a negative subject with an affirmative “shall.” The term “No person shall” is incorrect. The correct way to express a prohibition is either “No person may . . .” or “A person may not . . . .”

**(3) SEX-NEUTRAL LANGUAGE.** When drafting new rules and revising existing rules, eliminate all terminology that is not sex-neutral. Avoid the repetitious use of the phrases “he or she” and “his or her.” Do not use slashed alternatives, such as “he/she,” “his/her” or “s/he.” In most cases, a pronoun can be replaced with the noun to which it refers; for example, “~~he~~ the secretary shall set fees for state parks.” In other cases, a pronoun is unnecessary and should be deleted; for example, “The commissioner or ~~his~~ a designee shall be present.”

**(4) CAPITALIZATION.** Avoid using capital letters except for proper names. For proper names, capitalize according to standard rules of English usage with one major exception: do not capitalize state or federal departments or agencies other than the University of Wisconsin System.

**EXAMPLES:** city of Madison, Dane County, Dane and Racine counties, Mississippi River, World War II, public service commission, Mendota Mental Health Institute, national park service, U.S. fish and wildlife service, Madison Gas and Electric Company, and Internal Revenue Code.

**(5) NUMBERS.** Numbers are expressed using Arabic numerals, with certain exceptions. Numbers at the beginning of a sentence are spelled out. The number “one” is spelled out, unless it is in reference to a date, percentage, or money, or in a series of numbers.

**EXAMPLES:** The following are examples of when the numeral “1” is used rather than the word “one”—January 1; 1 percent; 1, 5, or 7; or \$1.

**(6) PARENTHESES.** Avoid using parentheses. If certain material is important to the thought or concept expressed in the rule, the material should be set apart with commas, not parentheses. Otherwise, place the material, if necessary, in an explanatory note immediately following the rule itself.

**(7) DEFINITIONS.** (a) The use of definitions is an important technique to achieve consistency and clarity of terminology within a chapter or section of rules. If a definition of a word or term applies to an entire chapter, the definition should appear at or near the beginning of the chapter. If a definition applies only to a particular rule section or subsection, it should appear only in that section or subsection, not somewhere else in the chapter or in a different chapter. Also, the extent of the applicability of the definitions should be clearly stated; for example, the definitions might be preceded by the phrase “In this chapter:” or “In this section:”. Definitions are arranged alphabetically.

(b) A definition is always drafted as a complete sentence. Substantive provisions are never incorporated as part of a definition.

***EXAMPLES OF INCORRECT STYLE:***

DHS 83.04 (18) DEPARTMENT. The Wisconsin department of health services.

(Example of incomplete sentence.)

DHS 83.04 (18) “Department” means the Wisconsin department of health services, which shall administer this chapter.

(Example of additional substance added.)

***EXAMPLE OF CORRECT STYLE:***

DHS 83.04 (18) “Department” means the Wisconsin department of health services.

(c) The use of the term “means” in a definition limits the scope of the definition solely to the example or examples stated. Use of the term “includes” expands the scope of the definition to encompass other reasonably related examples not specifically enumerated. If a rule is interpreting a statute that contains a definition using the term “includes,” the rule cannot use the term “means” in defining the same word.

(d) If a rule uses a definition that is identical to one found in the statutes, the definition may be drafted as a simple reference to the statutory definition; for example, “‘Obligation’ has the meaning given in s. 150.01 (16), Stats.”

**(8) ACRONYMS.** Acronyms or other abbreviations should be used only to improve readability. If acronyms are used for units of measurement, names of agencies or programs, or phrases in a rule, they must be defined and used consistently. If some purpose is served by using the full phrase interchangeably with the acronym, include both in the definition; for example, “‘EIA’ or ‘environmental impact analysis’ means . . . .”

**(9) AVOID CERTAIN WORDS AND PHRASES.** (a) Do not use slashed alternatives, such as “and/or,” in drafting administrative rules. Instead, determine whether the sentence means “and” or “or” and use the appropriate word. If the thought to be expressed involves a choice between one of two alternatives, or both, the proper phrasing to be used is “\_\_\_\_\_ or \_\_\_\_\_, or both.”

(b) Avoid the use of the words “currently,” “now,” and “formerly,” since these terms are meaningless once rules are printed. If necessary, make reference to a certain date; for example, “loans entered into on or after January 1, 1991.” If an agency wishes to insert the actual effective date of a rule into the text, this may be done by incorporating, in the location where the date is to appear, the following text—“the effective date of this section . . . [LRB inserts date].” This permits LRB to substitute the actual date.

(c) Avoid the use of vague words and phrases, such as “thereto,” “herein,” “thereafter,” “above,” “below,” “hereafter,” “heretofore mentioned,” and “hereunder.” Instead use specific references, such as “in this chapter,” “in subd. 1.,” or “under this section.” [See also s. 1.07 (1) (a) and (2), Manual.] Do not use the words “said” or “such” in place of an article; for example, “said form” should be “the form.” To avoid ambiguity, use specific references; for example, “the form specified in subd. 1.” Avoid the use of the vague term “etc.”

(d) When referring to a series of provisions or numbers, use “to” rather than “through”; for example, use “pars. (a) to (e)” or “items 11. to 20.”

(e) Generally use the singular form of a word. Do not use “(s)” to indicate that the word may be singular or plural.

(f) In definitions and in substantive provisions of a rule, “including, but not limited to,” should be avoided because it has the same meaning as “including.”

**1.02 Arrangement of rule-making orders. (1) INTRODUCTORY CLAUSE.** (a) New administrative rules are created and existing rules are revised or repealed by rule-making orders adopted by agencies with rule-making authority. A rule-making order begins with an introductory clause that is comprised of an enumeration of the rule provisions treated by the proposed order and the nature of the treatment and a relating clause concisely stating the subject matter of the proposed order.

(b) In the enumeration of provisions treated, group the provisions in the following order: to repeal; to renumber; to renumber and amend; to consolidate, renumber, and amend; to amend; to repeal and recreate; and to create.

(c) If a rule will have an impact on small business, include the phrase “and affecting small business” at the end of the relating clause, so that the Rules Clearinghouse can separately identify the rule on its website. [s. 227.15 (1m), Stats.]

**EXAMPLE:**

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order to repeal ATPC 7.02 (1); to renumber ATPC 7.02 (2); to renumber and amend ATPC 7.03; to amend ch. ATPC 7 (title) and ATPC 7.04 (title) and (2) and 7.05 (3) (a) (Note) and (b); to repeal and recreate ATPC 7.02 (3) and 7.05 (1); and to create ATPC 7.025, relating to dairy plant trustees.

**(2) RULE SUMMARY.** (a) Immediately following the introductory clause is a rule summary, as described in s. 227.14 (2), Stats. (which refers to the summary as an “analysis”). The summary should contain all of the following headings; if there is no information under a particular heading, the heading is included and the text should state that there is no information:

1. Statutes interpreted.

2. Statutory authority.
3. Explanation of agency authority.
4. Related statutes or rules.
5. Plain language analysis.
6. Summary of, and comparison with, existing or proposed federal statutes and regulations.
7. Comparison with rules in adjacent states.
8. Summary of factual data and analytical methodologies.
9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.
10. Effect on small business.
11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs.
12. Agency contact person (including e-mail and telephone number).
13. Place where comments are to be submitted and deadline for submission.

**NOTE:** Executive Order #50, *Guidelines for Promulgation of Administrative Rules*, issued by Governor Scott Walker on November 2, 2011, requires agencies to submit the draft rule summary (analysis) under s. 227.14 (2), Stats., to the Governor prior to submittal of a proposed rule to the Rules Clearinghouse.

(b) The purpose of the plain language analysis under par. (a) 5., above, is to provide an understandable and objective description of the effect of the rule. The analysis is not intended to be an exhaustive discussion of the rule, but should contain sufficient detail to enable the reader to understand the content of the rule and the changes made, if any, in existing rules. It should be written in plain, simple English.

**(2m) STATUTORY AUTHORITY.** (a) Since all authority for administrative rules is conferred by statute, it is important for agencies to identify the specific statutes that authorize promulgation. An agency should cite the statute that explicitly grants authority to the agency to promulgate the rule. If the agency does not have explicit authority to promulgate the rule and the agency considers the rule necessary to effectuate the purpose of a statute, the agency should cite the statute that grants general rule-making authority to the agency to enforce or administer a statute. [s. 227.11 (2) (a), Stats.] Also, an agency should carefully review a proposed rule for consistency with all relevant statutes.

(b) An agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule that interprets the provisions of a statute enforced or administered by the agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the Legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the Legislature.
3. A statute containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statute.

[s. 227.11 (2) (a), Stats.]

(c) An agency may not implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by rule. [s. 227.10 (2m), Stats.]

**NOTE:** See also Executive Order #50 regarding agency authority to promulgate rules.

**(3) TEXT OF RULE.** In drafting a chapter or section of administrative rules, proper organization of the text of the rule is important to aid the reader in understanding the pattern of regulation or required conduct set forth in the rule. Single-section chapters should be avoided. Combine similar material into a chapter with several sections, rather than arranging each section as a separate chapter. If it enhances clarity and convenience in locating provisions, a long or complex rule may be divided into appropriate chapters. The recommended sequence of material in a rule chapter or rule section is as follows:

- (a) Purpose of the chapter or section. A purpose statement is not necessary, but if it is included, it should be the first item.
- (b) Definitions of words or terms used in the chapter or section.
- (c) Substantive provisions in their order of importance, time sequence, or other logical arrangement.
- (d) Exceptions, exemptions, or exclusions, if any, to the chapter or section.
- (e) Benefits, sanctions, or results of compliance or noncompliance with the chapter or section.

**NOTE:** See also s. 1.04, Manual, for the arrangement of rule text in SECTIONS.

**NOTE:** When drafting proposed changes to an existing rule, the current version of a rule should be used. To obtain a copy of the current version, contact Bruce Hoesly or Tami Dodge at LRB.

**(3m) INITIAL APPLICABILITY.** If there is an existing rule that is modified by a rule, an agency may wish to include an initial applicability clause after the text of the rule and before the effective date clause described in sub. (4). An initial applicability clause may be used to apply the revised rule to events occurring on or after the effective date, and to apply the existing rule to events occurring before the effective date. An initial applicability clause may also be used to provide that a new rule applies to events occurring on or after a specified date.

**EXAMPLE:**

SECTION \_\_. INITIAL APPLICABILITY. This rule first applies to license renewal applications that are submitted on the effective date of this rule.

**(4) EFFECTIVE DATES.** (a) Each rule must have an effective date clause. If an agency intends that a rule take effect on the first day of the month following publication in the Register, the effective date clause should cite s. 227.22 (2) (intro.), Stats. [See also s. 2.115, Manual.]

**EXAMPLE:**

SECTION \_\_. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(b) If a rule will take effect on a specified date, the effective date clause should specify that date.

(c) If the agency desires a particular effective date for a rule, it should confirm the proposed date with LRB to be certain that the desired date is feasible.

(d) An effective date is set forth in a numbered SECTION at the end of a rule-making order. [See the example under par. (a), above.] LRB will include the effective date in the Register and in the Wisconsin Administrative Code (Administrative Code) in a history note.

**(5) EMERGENCY RULE.** If the rule is an emergency rule, it must include a statement of the facts constituting an emergency. [See s. 2.12, Manual.]

**(6) REGULATORY FLEXIBILITY ANALYSIS.** (a) If the rule will have any effect on small business, an initial regulatory flexibility analysis must be prepared and, if the rule may have an economic impact on small business, the rule must be submitted to the Small Business Regulatory Review Board (SBRRB). The initial regulatory flexibility analysis must be included in the notice of hearing. [ss. 227.14 (2g) and 227.17 (3) (f), Stats.; and s. 2.04 (6) (d), Manual.]

(b) The SBRRB will determine whether the rule will have a significant economic impact on a substantial number of small businesses. The agency will also need to prepare a final regulatory flexibility analysis for submission to the Legislature along with the proposed rule unless the SBRRB determines that the rule will not have a significant economic impact on a substantial number of small businesses. [s. 227.19 (3) (e) and (3m), Stats.; and s. 3.02 (2) (p), Manual.]

**NOTE:** The term “small business” is defined in s. 227.114 (1), Stats.

**(7) FISCAL ESTIMATES.** (a) A fiscal estimate is required for all proposed rules under s. 227.14 (4), Stats. The fiscal estimate must include all of the following:



1. Any anticipated fiscal effect of the rule on the fiscal liability and revenues of a county, city, village, town, school district, technical college district, and sewerage district.

2. A projection of the rule's anticipated state fiscal effect in the current biennium and a projection of the net annualized fiscal impact on state funds.

- 2m. For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.

3. A list of the major assumptions used in preparing the estimate.

(b) If the rule has no fiscal effect, independent of the fiscal effect of the statute upon which it is based, the agency should base its fiscal estimate on the fiscal effect of the statute.

(c) If, during the rule-making process, the rule is substantially revised so that the fiscal effect is significantly changed, the agency must prepare a revised fiscal estimate prior to promulgating the rule. The revised fiscal estimate is published in the Register.

(d) 1. The fiscal estimate must accompany any rule that is submitted to the Rules Clearinghouse for review under s. 227.15, Stats.

2. The fiscal estimate or a summary of the fiscal estimate and a statement of the availability of the full fiscal estimate must be provided to LRB when a notice of hearing on the rule is filed for publication in the Register. If the agency initiates the rule-making process with a 30-day notice pursuant to s. 227.16 (2) (e), Stats., the full fiscal estimate must be provided to LRB for publication with the notice.

**NOTE:** The Department of Administration (DOA) has developed a template for preparing a fiscal estimate and the economic impact analysis described in sub. (8). The template is available at: [http://legis.wisconsin.gov/lc/adminrules/files/AR\\_FiscalEstimate-DOA-2049.doc](http://legis.wisconsin.gov/lc/adminrules/files/AR_FiscalEstimate-DOA-2049.doc).

**(8) ECONOMIC IMPACT ANALYSES.** (a) An economic impact analysis must be prepared for every proposed rule before the rule is submitted to the Rules Clearinghouse for review. [s. 227.137, Stats.] This requirement does not apply to emergency rules. The analysis must include information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. In preparing the analysis, the agency must solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule and must prepare the analysis in coordination with local governmental units that may be affected by the proposed rule. The analysis must include all of the following:

1. An analysis and quantification of the policy problem that the proposed rule is intended to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.

2. An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule.
3. An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.
4. An analysis of alternatives to the proposed rule, including the alternative of not promulgating the proposed rule.
5. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.

**NOTE:** See Executive Order #50 for additional requirements pertaining to economic impact analyses.

(b) If an economic impact analysis relates to a proposed rule of the Department of Safety and Professional Services under s. 101.63 (1), Stats., establishing standards for dwelling construction, the analysis must address whether the rule would increase the cost of constructing or remodeling a dwelling by more than \$1,000. [s. 227.137 (3) (f), Stats.]

(c) On the same day that the agency submits the economic impact analysis to the Rules Clearinghouse under s. 227.15 (1), Stats., the agency must also submit the analysis to DOA, to the Governor, and to the Chief Clerks of each house of the Legislature for further distribution within the Legislature. [s. 227.137 (4), Stats.]

(d) If a proposed rule is modified after the economic impact analysis is submitted so that the economic impact of the proposed rule is significantly changed, the agency must prepare a revised economic impact analysis for the proposed rule as modified and submit the revised analysis in the same manner as the original. [s. 227.137 (4), Stats.]

(e) If an economic impact analysis regarding a proposed rule indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, DOA must review the proposed rule and issue a report. The agency may not submit a proposed rule to the Legislature for review under s. 227.19 (2), Stats., until the agency receives a copy of DOA's report and the approval of the DOA Secretary. [s. 227.137 (6), Stats.]

**(9) HOUSING REPORTS.** If a rule directly or substantially affects the development, construction, cost, or availability of housing in Wisconsin, DOA is required to prepare a report on the rule before it is submitted to the Rules Clearinghouse. The report must be prepared within 30 days of submission of the rule to DOA. The report must contain information about the effect of the rule on housing, including the specific information required under s. 227.115 (3) (a), Stats. The report is included in the agency's report to the Legislature under s. 227.19 (3), Stats.

**1.03 Organizing and numbering rule units. (1) GENERAL.** Each Administrative Code chapter consists of one or more sections. [See s. 1.02 (3), Manual.] Chapters may be subdivided into subchapters. Sections may be subdivided into the following subunits: subsections,

paragraphs, subdivisions, and subdivision paragraphs. When any section, or part of a section, is divided into smaller subunits, at least two subunits must be created. To preserve clarity and uniformity and to simplify drafting, rule sections should be numbered according to the decimal system and subdivided into subsections and smaller subunits whenever feasible.

**EXAMPLE:** As an example, the parts of s. DHS 163.10 (1) (a) 2. b. and the abbreviations for each subunit are as follows:

<b>DHS 163.</b>	<b>10</b>	<b>(1)</b>	<b>(a)</b>	<b>2.</b>	<b>b.</b>
Chapter (ch.)	Section (s.)	Subsection (sub.)	Paragraph (par.)	Subdivision (subd.)	Subdivision paragraph

**(2) FORMAT FOR RULE SUBUNITS.** The format for rule subunits is as follows:

(a) *Subchapters.* A chapter may be divided into subchapters for organizational purposes, but it is not necessary to use subchapters. See ch. DHS 163 as an example of a rule chapter that contains several subchapters. When referring to a subchapter, the abbreviation is “subch.” Subchapters are numbered with Roman numerals. Note that subchapter numbers are not cited as part of a citation to a specific section.

(b) *Sections.* Each section must be properly numbered to include the agency’s code letter designation followed by the rule’s chapter and section number. For example, “s. DHS 163.10” indicates a section of a rule of the Department of Health Services that appears in ch. DHS 163.

(c) *Subsections.* A section may be divided into “subsections,” which are designated by numerals enclosed in parentheses: “(1)”.

(d) *Paragraphs.* A subsection may be divided into “paragraphs,” which are designated by lower-case letters enclosed in parentheses: “(a)”. However, the capital letter “L” is used to distinguish the letter from the numeral one.

(e) *Subdivisions.* A paragraph may be further divided into “subdivisions,” which are designated by a number followed by a period: “1.”

(f) *Further divisions.* Further division beyond the subdivision level should be avoided whenever possible. In most situations, material can be rearranged so that it is not necessary to use any further division. However, if it is necessary, “subdivision paragraphs” may be created with lower-case letters followed by a period: “a.” Subdivision paragraphs may not be further divided.

**(3) INTRODUCTORY MATERIAL.** When dividing a unit of a rule into subunits that consist of a series of items, it may be necessary to precede the subunits with introductory material. The introductory material always ends in a colon and leads into the subunits. Each subunit following an introduction should form a complete sentence when read with the introduction. The introduction is designated “(intro.)” and usually contains words like “all of the following” or “any of the following”.

**EXAMPLE:**

RL 8.01 An applicant shall be granted a license if the applicant satisfies all of the following conditions:

- (1) Two years of post-secondary education at any of the following:
  - (a) A college or university.
  - (b) A technical college.
- (2) One year of apprenticeship.

**NOTE:** In this example, the material after “RL 8.01” and before the first colon is referred to as “s. RL 8.01 (intro.)”. If a rule amends only that portion of s. RL 8.01, the treatment clause should read “RL 8.01 (intro.) is amended to read:”. If a rule amends only the material after the (intro.), the (intro.) should not be shown.

Subsection (1) in the example is divided into three parts. The material after “(1)” and before the second colon is referred to as “s. RL 8.01 (1) (intro.)”. The three parts of sub. (1) are sub. (1) (intro.), par. (a), and par. (b).

**(4) PUNCTUATION AT END OF SUBUNITS.** When drafting rule text, all subunits of a rule should end with a period, rather than a comma or semicolon or the word “and” or “or” (except for introductory material which, as noted in sub. (3), ends in a colon). This facilitates future insertion or deletion of subunits without having to move the word “and” or “or” in the next-to-the-last subunit.

**(5) INSERTING NEW PROVISIONS; RENUMBERING.** (a) When inserting new rule sections (or smaller subunits) into existing rule provisions, it is generally best to avoid renumbering the existing rule sections or subunits, except as described in par. (c), below. Renumbering impairs the ability to trace a provision’s history and may result in ambiguity or error. It is also best to avoid renumbering any unit to eliminate a gap in numbering or to otherwise reuse a previously existing number that is eliminated by repeal. The reuse of numbers can cause confusion as to whether the current or previous provision is being referred to and may lead to erroneous cross-references.

(b) The use of the decimal system allows for the convenient insertion of new rule sections or subunits in their proper numerical location without the necessity of renumbering existing rule sections or subunits. For example, if it becomes necessary to insert a new rule section between s. ATP 10.03 and s. ATP 10.04, the new section should be numbered s. ATP 10.035. Furthermore, new subsections or paragraphs may be created and inserted between two existing subsections or paragraphs by merely adding a lower-case letter after the numeral or letter previously used. For example, “(2m)” should be used for a single subsection inserted between subs. (2) and (3), and “(am)” should be used for a single paragraph inserted between pars. (a) and (b).

**NOTE:** To leave the most space for future insertions under alphabetic numbering use the following letters:

One insertion:	m
Two insertions:	g r
Three insertions:	e m s
Four insertions:	d h p t
Five insertions:	c g n r w
Six insertions:	c g l p t x
Seven insertions:	b f k p s w y
Eight insertions:	b e h l p r u y

For example, if two new subsections are inserted between subs. (3) and (4), they should be numbered subs. (3g) and (3r).

(c) Renumbering is appropriate to do any of the following:

1. Provide space for a large quantity of new material.
2. Locate old material near new material on the same subject.
3. Relocate inappropriately placed material that may be easily overlooked or whose applicability may be in question in its current location.
4. Insert an initial item into a series to maintain a time sequence or alphabetical order.
5. Maintain outline format when all but one subunit of a unit is being renumbered or repealed.

(d) If renumbering is done, cross-references to the renumbered provision must be amended accordingly. [See s. 1.07 (1) (c), Manual.]

**NOTE:** See “Numbering of Sections” from the LRB *Bill Drafting Manual*, which contains an extensive discussion of numbering and renumbering provisions and may be accessed from the electronic version of this Manual at: <https://docs.legis.wisconsin.gov/document/adminruleprocedures>.

**1.04 Arrangement of rule text. (1) GENERAL.** (a) The text of a rule-making order is divided into sequentially numbered SECTIONS (denoted as SECTION 1, SECTION 2, and so forth) and each decimal-numbered rule provision treated in the rule-making order generally is placed in a separate SECTION of the order. The SECTIONS are arranged according to the numerical order of the decimal-numbered rule provision being treated, as it appears in the Administrative Code at the time of drafting or, in the case of a newly created provision, in the order in which it will appear in the Code.

(b) 1. Each SECTION begins with a treatment clause that cites the rule provision being treated and the type of treatment being made to the affected provision. For example, “Adm 1.01 is created to read:” is a treatment clause. As described in ss. 1.055 to 1.068, Manual, rule provisions may be created; amended; repealed; repealed and recreated; renumbered; renumbered and amended; or consolidated, renumbered, and amended.

2. Except in the case of a repeal or a renumbering, the treatment clause is followed by the text of the treated rule provision, set forth in a separate paragraph. The text of the rule provision should only include provisions that are treated in the SECTION and should not include untreated provisions. For example, if s. DHS 163.10 (1) (a) 1. is amended, only the text of subd. 1. should appear in the SECTION. The text of sub. (1) (intro.) and par. (a) (intro.) should not appear in the SECTION. [See also s. 1.05 (3) (c), Manual.]

**(2) SPECIFIC TREATMENT.** (a) *Same treatment.* 1. When a series of consecutively numbered rule sections are affected in their entirety by the same treatment, the affected rule sections may be included in a single SECTION of the draft.

**EXAMPLE:**

SECTION 1. Adm 1.03, 1.04, and 1.05 are amended to read:

Adm 1.03 (text)

Adm 1.04 (text)

Adm 1.05 (text)

2. A repeal, a repeal and recreation, or a renumbering and amendment of consecutively numbered rules sections may be included in the same SECTION of the rule-making order.

**EXAMPLE:**

SECTION 1. Adm 2.01 and 2.02 are repealed. (No text shown.)

- OR -

SECTION 1. Adm 2.01 and 2.02 are repealed and recreated to read:

Adm 2.01 (text)

Adm 2.02 (text)

- OR -

SECTION 1. Adm 2.01 and 2.02 are renumbered Adm 2.16 and 2.17 and amended to read:

Adm 2.16 (text)

Adm 2.17 (text)

- OR -

SECTION 1. Adm 2.01 and 2.02 are renumbered Adm 2.16 and 2.17 and Adm 2.17 (2), as renumbered, is amended to read:

Adm 2.17 (2) (text)

3. When a number of rule sections are affected in their entirety by the same treatment but are not consecutively numbered, those sections may not be included in a single SECTION of the rule-making order.

**EXAMPLE:**

SECTION 1. Adm 3.01 and 3.02 are amended to read:

Adm 3.01 (text)

Adm 3.02 (text)

SECTION 2. Adm 3.04 is amended to read:

Adm 3.04 (text)

4. When two or more subsections, paragraphs, subdivisions, or subdivision paragraphs of the same rule section are affected by the same treatment, they may be included in the same SECTION of the rule-making order even though there are unaffected subunits intervening. Do not place nonconsecutive subunits in the same SECTION if an intervening subunit is affected by a different treatment.

**EXAMPLE:**

SECTION 1. Adm 20.02 (1), (2) (a) and (5) (c) 3. are amended to read:

Adm 20.02 (1) (text)

(2) (a) (text)

(5) (c) 3. (text)

5. When parts of a rule section are renumbered to a different rule section and some of the subunits within the section are internally renumbered, this may be done in one SECTION by showing each of the subunits as they are currently numbered and then showing how they will be renumbered.

**EXAMPLE:**

SECTION 1. DHS 144.09 (title), (1) (a), (b), and (c) and (2) are renumbered DHS 144.065 (title), (1) (b), (c), and (d) and (2).

(b) *Different treatment.* When two or more subsections, paragraphs, subdivisions, or subdivision paragraphs of the same rule section are affected by different treatments, each is treated separately, in numerical order, in separate SECTIONS of the rule-making order.

(c) *Sequence of treatment.* When a rule section is to be renumbered, the present rule section number, as opposed to the proposed new section number, determines the sequence of treatment in the rule-making order.

**1.05 Titles. (1) USE OF TITLES.** All rule chapters, subchapters, and sections must have titles. Titles to any unit of a rule are not part of the substance of the rule itself. If titles are also used for any subsection, paragraph or subdivision, titles should be utilized in a consistent manner; for example, if any subsection of a particular rule section is titled, then all of the subsections in that section should be titled. No units may be given titles unless the immediately higher units also have titles. For example, in order to have paragraph titles, titles should also be created for all subsections in the affected section. Titles may not be used for subdivision paragraphs.

(2) TITLE FORMAT. For drafting purposes:

(a) Chapter and subchapter titles are centered and written in solid capital letters as follows:

CHAPTER DHS 61  
COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITY AND  
ALCOHOLISM AND OTHER DRUG ABUSE SERVICES  
and  
SUBCHAPTER II  
COMMUNITY MENTAL HEALTH PROGRAMS

(b) Section titles are written with an initial capital letter and in bold print; for example, **DHS 61.71 Inpatient program standards.**

(c) Subsection titles are written in solid capital letters; for example, DHS 61.71 (2) PROGRAM CONTENT.

(d) Paragraph titles are written with an initial capital letter and italicized; for example, DHS 61.71 (2) (a) *Therapeutic milieu.*

(e) Subdivision titles are written with an initial capital letter and are enclosed in single quotation marks; for example, DHS 61.71 (2) (a) 2. ‘Staff functions.’

(3) AMENDING OR CREATING TITLES. (a) If a title is being amended or created for a rule provision that is not otherwise revised, the citation to the rule provision and the notation “(title)” should be included in the enumeration of provisions treated (see s. 1.02 (1) (a), Manual) as follows: “...to amend ATCP 1.01 (title)...” or “...to create ATCP 1.02 (title)...,” as appropriate. In addition, in a rule SECTION, the citation to the rule provision and the notation “(title)” should be included in the treatment clause and rule text as follows:

SECTION \_\_. ATCP 1.01 (title) is amended to read:

ATCP 1.01 (title) **Grass for cows pigs.**

SECTION \_\_. ATCP 1.02 (title) is created to read:

ATCP 1.02 (title) **Grass for horses.**

(b) Titles to units of a rule are amended by use of strike-throughs and underscores. Titles to units of a rule are created without strike-throughs and underscores.

(c) If a rule provision containing a title is amended, the title is shown even if it is not amended. If a rule provision not containing a title is amended, the title of any larger unit of which the provision is a part is not shown; however, the title of the larger unit is shown if the amended provision is introductory material that is immediately preceded by the title.

**1.055 Creating new provisions.** (1) When creating a rule provision, place the new material in the most appropriate location using the numbering system discussed in s. 1.03, Manual. Rearrange and renumber existing material only when necessary to structure the resulting rule in a logical manner and avoid misinterpretation of the rule.



(2) The text of a newly created rule provision is shown as it will appear after promulgation, without strike-throughs and underscores.

**1.057 Repealing provisions.** A repeal is used to eliminate an entire rule section or subunit, chapter, or subchapter. When repealing an existing rule provision, the repealed provision is cited in the treatment clause and no rule text is shown.

**EXAMPLE:** “Section \_\_. ATCP 10.01 is repealed.”

**1.06 Amending provisions. (1) STRIKING AND UNDERSCORING.** (a) When amending a current rule provision, language to be removed is stricken-through (~~stricken-through~~) and new material to be inserted is underscored (underscored). When material is deleted and other material is inserted in the same location, the new underscored material always immediately follows the stricken material. Even if the stricken material consists of more than one sentence, the new underscored material that replaces the stricken material is inserted at the end of all stricken material.

(b) Underscoring is not used when creating an entire rule unit; strike-throughs are not used when repealing an entire rule unit.

(2) **AMENDING A WORD.** When a single word is amended, the existing word is stricken in its entirety and the new word is underscored immediately after the strike-through.

**EXAMPLES OF INCORRECT AND CORRECT STYLES:**

Incorrect:

section\_  
sections\_  
subchapter\_  
miles\_

Correct:

Section s.  
sections ss.  
subchapter subch.  
~~mile~~ miles

(3) **CHANGING THE BEGINNING OF A SENTENCE.** When language at the beginning of a sentence is stricken and the sentence begins with a word in the sentence, strike-through all words at the beginning of the sentence including the first word of the recreated sentence. Immediately after the strike-through, recreate the same word beginning with a capital letter and underscore the word.

**EXAMPLE OF INCORRECT STYLE:**

ER 29.03 (2) (b) ~~In any reinstatement when an employee who has obtained permanent status in class~~ is required to serve . . . .

**EXAMPLE OF CORRECT STYLE:**

ER 29.03 (2) (b) ~~In any reinstatement when~~ When an employee ~~who has obtained permanent status in class~~ is required to serve . . . .

(4) **PERIODS.** Periods are usually preserved in material being amended. Periods are not stricken or underscored unless a new sentence is created, an old sentence is eliminated, or two or more existing sentences are combined.

**1.065 Repealing and recreating provisions.** If major changes are being made to an existing rule provision, the existing provision may be repealed and recreated rather than amended.

This eliminates the previously existing language and replaces it with new language shown in the rule-making order. Use “repeal and recreate” only when intending to repeal an existing provision and create a new provision in its place. The text of a repealed and recreated rule should be shown as it will appear after promulgation, without strike-throughs and underscores. Note that a drawback of repealing and recreating rule provisions is that only the newly created text is shown, and not the changes to existing text.

**1.067 Renumbering provisions.** Rule sections or subunits may be renumbered to reorganize existing material. Whole sections may be renumbered for more logical placement within a rule chapter or can be moved to a different chapter. Subunits of sections may be moved within their current section or to a different section. Renumbered sections may be amended in the same SECTION of a rule-making order in which they are renumbered. If a provision is renumbered without amendment, the renumbering is described in the treatment clause and no text is shown. If a provision is renumbered and amended, the renumbering and amendment are listed in the treatment clause and the amended text is shown under the new number. [See s. 1.03 (5), Manual.]

**EXAMPLE:** SECTION \_\_. ATPC 1.01 (1) is renumbered ATPC 1.37 (3) (no text shown).

**EXAMPLE:** SECTION. \_\_. ATPC 1.01 (1) is renumbered ATPC 1.37 (3) and amended to read:

ATPC 1.37 (3) (insert amended text using strike-throughs and underscores).

**1.068 Consolidating, renumbering, and amending provisions.** Rule sections or subunits may be consolidated, renumbered, and amended to reorganize and amend existing material. The most common use for this action is to repeal a subpart that is no longer needed and combine the (intro.) and remaining subpart. The action is taken in two steps: (1) consolidating, renumbering, and amending the (intro.) and retained subpart; and (2) repealing the subpart that is no longer needed.

**EXAMPLE:**

SECTION \_\_. Ins 3.46 (13) (a) (intro.) and 2. are consolidated, renumbered Ins 3.46 (13) (a) and amended to read:

Ins 3.46 (13) (a) An insurer may provide compensation to an intermediary ~~or other representative~~, and an intermediary ~~or representative~~ may accept compensation for the sale of a long-term care policy or certificate only if: ~~2. The~~ the compensation provided in the 2nd year or period and subsequent years is the same ~~as provided in the 2nd year or period~~ and is provided for at least 5 renewal years.

SECTION \_\_. Ins 3.46 (13) (a) 1. is repealed.

**1.07 References to other provisions; citations. (1) GENERAL.** (a) Do not use general terms, such as “et. seq.,” “this provision,” “this rule,” “of the code,” or “of this chapter” when making references to another rule or part of a rule. Make the references specific.

(b) It is not necessary to reproduce chapter, section, or subsection titles in a reference in the text of a rule; just use the numerical reference.

(c) When existing rules are renumbered, repealed, or repealed and recreated, carefully review other rules that contain references to the revised rules and make any needed cross-reference changes by referring to the Administrative Code Cross-Reference Manual that may be accessed at: <http://legis.wisconsin.gov/rsb/code.htm>. Search for the whole section number of the cite being affected, including the acronym (ex., ATPC 10.01). Revise all references located in your agency's code as necessary, including in chapters not otherwise affected by the rule. Inform LRB of any cross-references in codes promulgated by other agencies.

(2) INTERNAL AND EXTERNAL REFERENCES. Differing format is used for internal and external references. An internal reference is a reference to another portion of the Administrative Code that is within the same unit as the portion where the reference occurs, thus making a fully concise citation unnecessary. For example, "ATPC 1.01 (1) (b)" is an internal reference when referred to in other portions of ATPC 1.01. An external reference is a reference to portions of the code outside of the portion containing the reference, thus necessitating a full, precise citation in order to achieve accuracy. Examples of the recommended format for internal and external citations are as follows:

<i>Citation</i>	<i>Internal</i>	<i>External</i>
Statutes	_____	s. 15.01, Stats.
Rules chapters	this chapter	ch. ATPC 14
Rules subchapters	this subchapter	subch. IV [same chapter], subch. IV of ch. ATPC 14 [different chapter]
Rules sections	this section	s. ATPC 14.24
Rules subsections	this subsection	s. ATPC 14.24 (2) [different section], sub. (2) [same section]
Rules paragraphs	this paragraph	s. ATPC 14.24 (2) (a) [different section], sub. (2) (a) [different subsection], and par. (a) [same subsection]
Rules subdivisions	this subdivision	s. ATPC 14.24 (2) (b) 3. [different section], sub. (2) (b) 3. [different subsection], par. (b) 3. [different paragraph], and subd. 3. [same paragraph]
Rules subdivision paragraph	this subd. 3. a.	s. ATPC 14.24 (2) (b) 3. a. [different section], sub. (2) (b) 3. a. [different subsection], par. (b) 3. a. [different paragraph], and subd. 3. a. [different subdivision or same subdivision]
Alternative	this subsection or sub. (2) [reference is in sub. (1)]	sub. (1) or (2) [same section], s. ATPC 14.18 (1) or (2) [different section]
Plural	this subsection and sub. (2) [reference is in sub. (1)]	subs. (1) and (2) [same section], s. ATPC 14.18 (1) and (2) [different section]
Consecutive series	subs. (1) to (5)	s. ATPC 14.18 (1) to (5)

**NOTE:** References to "Wis. Adm. Code" should not be used when making external references. For example, a reference to "s. ATPC 14.24 (1)" clearly refers to the Administrative Code and not the statutes, because the number "14.24 (1)" is preceded by "ATPC." Material relating to "ATPC" can only be found in the Wisconsin Administrative Code and not in the statutes.

**NOTE:** Use “s.” when referring to a single section of a rule, and use “ss.” when referring to multiple sections of a rule. Do not use “ss.” if a citation refers to a single section and multiple subparts of the section. All of the following are examples of the correct use of “s.” and “ss.”:

- s. ATCP 14.01
- ss. ATCP 14.01 and 14.03
- s. ATCP 14.02 (1) and (2)
- ss. ATCP 14.03 (1) and 14.06 (2)

**(3) FEDERAL STATUTES AND REGULATIONS.** (a) When citing a federal law, use the U.S. Code reference; for example, 42 USC 1396a (a) (13). If an agency wishes to include a reference to a Public Law or a named federal act, this may be done in a note. An exception to this citation requirement is permitted for citations to the Internal Revenue Code, which is a term that is defined in the statutes. When citing a provision in the Internal Revenue Code, cite either the U.S. Code provision or a section of the Internal Revenue Code, as defined in either s. 71.01 (6) or 71.22 (4), Stats.

(b) When citing a federal regulation that is currently in force, use the Code of Federal Regulations citation; for example, 22 CFR 13.2.

**NOTE:** See s. 2.08, Manual, for the use in rules of the incorporation, by reference, of standards established by technical societies and organizations of recognized national standing.

**1.08 Repetition of language. (1) STATUTORY LANGUAGE.** Avoid unnecessary repetition of statutory language. Statutory language may be used if necessary to convey the intent of a particular rule.

**(2) FEDERAL REGULATIONS.** If an agency is required to adopt federal regulations in addition to its own administrative rules to implement a statute, the agency may include the verbatim federal regulations in its rules. The federal regulation language should be clearly indicated to distinguish it from the remainder of the rule.

**1.09 Notes to rules. (1) EXPLANATORY MATERIAL.** If it is necessary to clarify a rule by using examples, illustrations, or other explanatory material or if an agency wishes to disclose where or how particular information, including forms, may be obtained, the explanatory material follows the applicable rule provision and is labeled “Note:” or “Example:”. Notes may not include substantive requirements and are not part of the substantive law created by rule.

**(2) CREATING, REPEALING, AND AMENDING NOTES.** If a note is created, repealed, or amended, that action should be included in the enumeration of provisions treated (in the introductory clause described in s. 1.02 (1) (a), Manual) and in the proper sequentially numbered rule SECTION, as shown in the following examples:

(a) To create a note, insert “...to create NR 1.05 (Note)...” in the enumeration of provisions treated. In the rule text, use the following treatment clause: “SECTION \_\_\_\_\_. NR 1.05 (Note) is created to read:”. Insert the text of the new note, without underscoring, as it is entirely new language.

(b) To repeal an existing note, insert “...to repeal NR 1.05 (Note)” in the enumeration of provisions treated. In the rule text, use the following treatment clause: “SECTION \_\_\_\_ NR 1.05 (Note) is repealed.” Do not show the text of the note, as the language is being repealed.

(c) To amend an existing note, insert “...to amend NR 1.05 (Note)” in the enumeration of provisions treated. In the rule text, use the following treatment clause: “SECTION \_\_\_\_ NR 1.05 (Note) is amended to read:”. Insert the text of the current note and strike through material to be deleted and underscore material to be inserted.

**(3) REFERENCE TO FORMS.** If a rule requires a new or revised form, include a reference to the form in a note to the rule. The note should indicate the address that a person may write to, or the telephone number that a person may call, in order to obtain the form. If the form is available on the Internet, the note should indicate the website from which the form may be obtained. A copy of the form should be attached to the rule or a statement should be included indicating where a copy of the form may be obtained at no charge. LRB will insert the note in the Administrative Code. [See ss. 227.01 (13) (q) and 227.23, Stats., for the treatment of forms in ch. 227, Stats.]

**1.10 Time periods for action on permit applications.** Each rule that includes a requirement for a business to obtain a permit must include the number of business days, calculated beginning on the day a permit application is received, within which the agency will review and make a determination on the permit application. [s. 227.116 (1r), Stats.]

**NOTE:** Under s. 227.116 (1g), Stats., “permit” means any approval of an agency required as a condition of operating a business in this state.



## PART 2

### PROMULGATION PROCEDURE

**2.001 Submission of materials to LRB.** (1) All materials submitted to LRB for publication in the Administrative Register and Administrative Code, including economic impact analyses and fiscal estimates, must be submitted electronically as Microsoft Word documents. **In creating proposed rules and related documents, do not submit any documents to LRB that contain auto-formatting or auto-numbering. Do not submit any documents that use the Track Changes function to indicate underscores.**

(2) Email documents to [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov). LRB will email an acknowledgement of receipt of each submitted item. If you do not receive the acknowledgement, contact Bruce Hoesly or Tami Dodge at LRB. Except for certified copies of emergency and final permanent rules required to be filed with LRB under s. 227.20, Stats., no paper copies of any documents need be submitted to LRB.

**2.002 Deadline for filing notices.** All notices received for publication in the Register by 3:30 P.M. Monday will be published in the Register the following Monday. Exceptions to the deadline may be allowed by LRB in the event of exceptional circumstances. See s. 2.11 (2), Manual, for the deadline for filing final rule orders for publication in the Administrative Code.

*NOTE:* Beginning on January 5, 2015, the Register will only be published as an electronic document on the Internet. Publication will be each Monday, except when Monday is a holiday, when the Register will be published on the Tuesday. Current and previous editions of the Register may accessed at:

<http://docs.legis.wisconsin.gov/code/register>

<http://legis.wisconsin.gov/rsb/code.htm>

**2.003 Submission of materials to state administrative rules website.** Agencies are required to submit in electronic format to [adminrules@wisconsin.gov](mailto:adminrules@wisconsin.gov), for inclusion on the state's administrative rules website, all publicly available materials regarding rules that are submitted to DOA, the Rules Clearinghouse, the Chief Clerks, LRB, legislative standing committees, and JCRAR. This includes scope statements, submissions to the Rules Clearinghouse of proposed rules and accompanying materials (such as fiscal estimates and economic impact analyses), reports of the SBRRB, notices regarding hearings, final proposed rules and reports to the Legislature that are sent to the Chief Clerks for referral to standing committees, emergency rule-making orders, requests for extensions for emergency rules, modifications to proposed rules, withdrawals or recalling of proposed rules, and final rules that are submitted to LRB for publication.

*NOTE:* The state administrative rules website on which all of these materials may be found is: <http://adminrules.wisconsin.gov>.

*NOTE:* Executive Order #50 requires that these materials also be submitted to the Governor's Office of Regulatory Compliance via: [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov).

**2.005 Statement of scope of proposed rules.** (1) (a) For each administrative rule an agency plans to promulgate, a scope statement must be prepared, approved by the Governor,

published in the Register, and approved by the person or body with policy-making powers for the agency. The individual or body with policy-making powers may not approve the statement until at least 10 days after publication of the statement in the Register. A scope statement is required for both proposed emergency rules and permanent rules. [ss. 227.135 and 227.24 (1) (e), Stats.; and Executive Order #50.]

**NOTE:** DOA has created a template for preparing scope statements:  
[www.doa.state.wi.us/docview.asp?docid=9031&locid=166](http://www.doa.state.wi.us/docview.asp?docid=9031&locid=166).

(b) No state employee may perform any activity in connection with the drafting of a rule, except for the preparation of the scope statement, until the scope statement is approved by the Governor and the individual or body with policy-making powers for the agency. [s. 227.135 (2), Stats.]

(2) The scope statement must include all of the following elements, which should serve as the headings in the scope statement in the order stated below:

(a) A description of the objective of the proposed rule.

(b) A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

(c) The statutory authority for the proposed rule.

(d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

(e) A description of all of the entities that may be affected by the proposed rule.

(f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

[s. 227.135 (1), Stats.]

(3) The Governor must approve the scope statement in writing prior to submittal of the statement to LRB for publication in the Register. [s. 227.135 (2), Stats.]

**NOTE:** Executive Order #50 contains additional requirements needed to obtain the Governor's approval.

(4) (a) Upon approval by the Governor, the agency must send the scope statement to LRB for publication in the Register and, on the same day, send a copy to the Secretary of DOA. The agency must include the date of the Governor's approval in the submission of the scope statement to the LRB.

(b) Upon receipt by LRB of a scope statement for publication in the Register, LRB will assign a discrete identifying number to the scope statement in the following format: SS 001-11, which will be published in the Register along with the scope statement and the date of the Governor's approval. LRB will publish the scope statement in the next Register whose filing deadline has not been reached.

[s. 227.135 (3), Stats.]



(c) While the individual or body with policy-making powers may not approve a scope statement sooner than 10 days after publication, the statutes contain no limit on when, following the Governor's approval, the scope statement must be published, no date by which a published scope statement must be approved by the individual or body with policy-making powers, and no time within which a proposed rule contemplated in the statement must be submitted to the Rules Clearinghouse in the case of a proposed permanent rule or published in the case of a proposed emergency rule. However, see the discussion of revised scope statements in sub. (5), below.

**NOTE:** Executive Order #50 states that an agency must file the scope statement for publication by LRB within 30 calendar days of the Governor's approval if it intends to proceed with rule-making or the Governor will deem the scope statement withdrawn.

**NOTE:** Beginning on January 5, 2015, the Register will be published on the Internet each Monday, except when Monday is a holiday, when the Register will be published on the following Tuesday. See s. 2.002, Manual, for the filing deadline for documents being published in the Register. Current and previous editions of the Register may be accessed at:

<http://docs.legis.wisconsin.gov/code/register>

<http://legis.wisconsin.gov/rsb/code.htm>

(5) (a) If an agency changes the scope of a proposed rule in any meaningful or measurable way at any time after a scope statement is approved by the Governor and the individual or body with policy-making powers, the agency must prepare and obtain approval of a revised scope statement in the same manner as the original statement was prepared and approved. The circumstances necessitating a revised scope statement include where the agency has changed the scope of the rule to include any activity, business, material, or product that is not specifically included in the original scope of the rule. [s. 227.135 (4), Stats.] It would appear that, if the change in scope of the proposed rule occurs after the Governor's approval of a scope statement and before approval by the individual or body with policy-making powers for the agency, a revised scope statement must be prepared and approved as provided in s. 227.135 (4), Stats.

(b) A revised scope statement must contain all of the elements required for an original scope statement as set forth in sub. (2), above. The statement should be labeled a "Revised Statement of Scope" and contain a preface identifying the original statement that is being modified, as follows (as applicable):

This revised statement of scope modifies, SS \_\_\_\_, which was approved by the Governor on \_\_\_\_ (date), published in Register \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), and approved by \_\_\_\_ (name of policy making body or individual for the agency as required by s. 227.135 (2), Stats.) on \_\_\_\_ (date), relating to \_\_\_\_ (state the subject as it appears in the original statement.)

(c) As with the original scope statement, the modified statement is submitted to the Governor for approval as provided in sub. (3), above, submitted to LRB for publication as provided in sub. (4), above, and submitted for approval by the individual or body with policy-making powers

for the agency as provided in sub. (4), above. As with the original statement, no state employee may perform any activity in connection with the drafting of the rule, except for the preparation of the revised scope statement, until the scope statement is approved by the Governor and the individual or body with policy-making powers for the agency.

**NOTE:** For examples of actual scope statements filed by agencies with LRB, consult prior issues of the Register, available on the web at: <http://www.legis.state.wi.us/rsb/regindex.htm>.

**2.007 Presubmission editing of proposed rules by Legislative Reference Bureau.** The LRB offers the services of its staff editors to provide editing of all proposed rules, including emergency rules, generally, prior to their submission to the Legislative Council Clearinghouse, or publication, in the case of emergency rules. The use of this service is strictly voluntary on the part of each agency. Editing will be for structure of the proposed order and form and style of the rule text. Legality, authority, or the substance of the rule will not be addressed, and the rule analysis will not be reviewed.

Rules to be edited should be submitted to LRB the same as any other Register or Rule submission, indicating any time constraints and providing the scope statement number of the rule for tracking purposes. Editors will then mark all corrections they find in the entire draft, using the Track Changes function, and the marked up copy will be returned to the agency by email. Explanatory comments will be included as necessary.

**2.01 Submittal to Legislative Council staff.** (1) Except for emergency rules, a copy of each proposed rule must be submitted to the Rules Clearinghouse as provided in s. 227.15, Stats. [See s. 3.01, Manual, for the requirements for submitting proposed rules to the Rules Clearinghouse for review.]

**NOTE:** On the same day that an agency submits to the Rules Clearinghouse a proposed rule that may have an economic impact on small businesses, the agency must submit the proposed rule and other materials to the SBRRB, as provided in s. 227.14 (2g), Stats. See 2011 Wisconsin Act 46 for changes to the rules promulgation process relating to the SBRRB.

(2) The agency must submit to LRB for publication in the Register, and to the Secretary of DOA, a notice, approved by the person or body with policy-making authority over the subject matter of the proposed rule, that the agency has submitted a proposed rule to the Rules Clearinghouse. [See s. 227.14 (4m), Stats.] The notice must include all of the following:

- (a) The date the proposed rule was submitted to the Rules Clearinghouse.
- (b) The subject matter of the proposed rule.
- (c) Whether a public hearing is required. Include the date of the hearing if it is known. If a hearing is not required, note the applicable exemption under s. 227.16 (2), Stats., in the notice and proceed as provided in s. 2.05 or 2.06, Manual.
- (d) The organizational unit that is responsible for preparing the rule.
- (e) The name and contact information for a contact person, if desired by the agency.

(f) The following form is suggested:

**Notice of Submittal of Proposed Rule to  
Legislative Council Rules Clearinghouse**

On \_\_\_\_\_ (*insert date*), the (*Name of Agency*) submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

**Analysis**

The proposed rules affect Chapters \_\_\_\_\_, relating to \_\_\_\_\_ (*insert relating clause from introductory clause of proposed rule*).

A related emergency rule, Em\_\_\_\_, affecting the same (*or similar*) Administrative Code provisions contained in this proposed rule and relating to the same purpose has been published and is in effect.

**Statement of Scope**

The scope statement for this rule, SS \_\_\_\_\_, was approved by the Governor on \_\_\_\_\_ (*date*), published in Register No. \_\_\_\_ (*Register Number*), on \_\_\_\_\_ (*Register publication date*), and approved by \_\_\_\_\_ (*name of policy-making body or individual for the agency as required by s. 227.135 (2), Stats.*) on \_\_\_\_\_ (*date*).

**Agency Procedure for Promulgation**

A public hearing is required and will be held on [a date to be determined *or* \_\_\_\_\_ (*insert date of hearing*)].

[*or*]

Pursuant to s. 227.16 (2), Stats., a public hearing is not required. (*Insert one of the following as applicable*)

The proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision.

The proposed rule is being promulgated at the direction of the Joint Committee for Review of Administrative Rules under s. 227.26 (2) (b).

The proposed rule will be promulgated without public hearing unless a petition is received by the agency within 30 days after publication of the notice, signed by any of the following:

1. Twenty-five natural persons who will be affected by the proposed rule.
2. A municipality that will be affected by the proposed rule.
3. An association which is representative of a farm, labor, business, or professional group that will be affected by the proposed rule.

**Agency Organizational Unit Primarily Responsible for Promulgating Rule**

[*Insert unit name or the agency name if there is no agency subunit responsible for the rule*]

**Agency Contact Person**

[*Insert name and contact information*]

**NOTE:** This form may be accessed as a Word document on LRB's website at: [http://legis.wisconsin.gov/rsb/code/register\\_templates/](http://legis.wisconsin.gov/rsb/code/register_templates/).

(3) For rules submitted to the Rules Clearinghouse for which the rule's scope statement was submitted for publication in the Register before June 8, 2011, and is not subject to [2011 Wisconsin Act 21](#), insert the following:

This rule is not subject to s. [227.135 \(2\)](#), Stats., as affected by [2011 Wis. Act 21](#). The scope statement for this rule, published in Register No. \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), was sent to LRB prior to June 8, 2011 (the effective date of [2011 Wisconsin Act 21](#)).

**2.02 Notice and public hearings. (1) GENERAL RULE.** Except as provided in s. 227.16, Stats., all rule-making by an agency must be preceded by notice and public hearing as required under ss. 227.17 and 227.18, Stats., or any other specific statute.

(2) EXCEPTIONS. Unless another statute specifically requires the agency to hold a hearing prior to promulgating the proposed rule, s. 227.16, Stats., provides that public hearing and notice for a proposed rule is not required if any of the following apply:

(a) The proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision. [s. 227.16 (2) (b), Stats.]

(b) The proposed rule is adopted as an emergency rule. Notice and public hearing are required after emergency rule adoption. [s. 227.16 (2) (c), Stats.; and s. 2.12, Manual.]

(c) The proposed rule is being promulgated as directed by JCRAR under s. 227.26 (2) (b), Stats. [s. 227.16 (2) (d), Stats.; and s. 2.06, Manual.]

(d) The proposed rule is published under the 30-day notice procedure in s. 227.16 (2) (e), Stats. [See s. 2.05, Manual.]

(e) The proposed rule consists of one or more forms that impose a requirement that meets the definition of a rule. [s. 227.23, Stats.]

**NOTE:** Except in the case of an emergency rule, if one of these exceptions is utilized, the agency should do all of the following:

1. Note in its notice of submittal to the Rules Clearinghouse [s. 2.01 (2) (f), Manual] and its proposed rule-making order that the rules are being adopted under the procedure in s. 227.16 (2) (b), (d), or (e), Stats.

2. Complete all other procedural requirements for rule-making as with any other rule.

**2.03 Informal or informational hearings.** An agency may hold hearings to solicit public comment on a general subject area that may result in future rule-making. Hearings of this nature do not satisfy the requirement of s. 227.16 (1), Stats. Notices for informal or informational hearings may be published in the Register. [s. 227.16 (6), Stats.]

**2.04 Ten-day notice procedure. (1) GENERAL.** If a hearing is required, the agency must follow the notice procedure set forth in this section. [s. 227.17, Stats.]

(2) **SUBMISSION TO LRB.** The agency must send written notice of a hearing to LRB for publication in the Register and, if required, to a local newspaper under s. 227.17 (1) (a), Stats.

(3) **SUBMISSION TO LEGISLATORS.** The agency must send written notice of a hearing to every member of the Legislature who has filed a request for a notice in writing with LRB. Upon request, LRB must furnish to an agency the names and addresses of those legislators who have requested notice.

(4) **OTHER NOTICE.** The agency is required to take whatever steps it deems necessary to convey notice to interested persons, including sending press releases to local newspapers, mailing notice to interested parties, and making radio spots available in the area where a hearing will be held.

(5) **DATES FOR NOTICE.** An agency may not hold a public hearing on a proposed rule until after it has received the Rules Clearinghouse's written report containing the Clearinghouse's review of the proposed rule or until after the end of the initial 20-working day Clearinghouse review period. [s. 227.15 (1), Stats.] However, the agency may notice the hearing before receiving the Clearinghouse Report. The notice must be published in the Register at least 10 calendar days prior to the date set for a hearing. [s. 227.17 (2), Stats.]

(6) **INFORMATION INCLUDED IN NOTICE.** Under s. 227.17 (3), Stats., the notice must include all of the following:

(a) A statement of the time, date, and place of the hearing.

(b) A copy of the proposed rule as submitted to the Legislative Council staff under s. 227.15 (1), Stats.

**NOTE:** The copy of the rule submitted to Legislative Council staff includes the economic impact analysis and any other documents submitted to the Legislative Council with the proposed rule. Submit to LRB as separate Word documents the notice document (see sub. (7), below, for the form of the notice document), the proposed rule, the economic impact analysis, and any other document submitted to Legislative Council staff.

(c) Any report prepared by the Department of Administration under s. 227.137 (6), Stats.

**NOTE:** Section 227.137 (6), Stats., provides:

If an economic impact analysis regarding a proposed rule indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, the department of administration shall review the proposed rule and issue a report.

(d) An initial regulatory flexibility analysis if the proposed rule will have an effect on small businesses as defined in s. 227.114 (1), Stats., or a statement indicating that the proposed rule will not have an effect on small business, along with the electronic mail address and telephone number of the small business regulatory coordinator. An initial regulatory flexibility analysis must contain all of the following:

1. A description of the types of small business that will be affected by the rule.
2. A brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule.
3. A description of the types of professional skills necessary for compliance with the rule.

[s. 227.17 (3) (f), Stats.]

(e) The address to an Internet site that allows a person to comment on the rule, such as the agency's website or the state administrative rule website (<https://health.wisconsin.gov/admrules/public/Home>).

(f) Any additional matter prescribed by statutes as applicable to the specific agency or class of rules under consideration.

(7) FORM. The following 10-day notice form is suggested:

### Notice of Hearing

The (*Name of Agency*) announces that it will hold a public hearing on [a permanent rule *or* an emergency rule (*or both*)] (*Here insert a short statement of the administrative code material treated by the rule followed by the relating clause taken from proposed rule. See the examples below.*), at the time and place shown below.

Examples:

to repeal ch. ATP 141.03 and 141.04 (1) (b); and to amend 141.04 (1) (a) and (2) (a) relating to the cherry marketing order.

to revise ch. NR 150 relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.\*

\*This serves as an abbreviation of the following text contained in the Proposed Rule Order. LRB will insert a link to the full text of the rule order that will appear in the header of the Notice of Hearing as it appears in the Register.

to **repeal** NR 150.10 (1m) (b), and 150.20 (3) (a) 4. and 5.; to **amend** NR 150.03 (1), (15) (intro.), (19), (25) and (26), 150.10 (1) and (1m) (a), (c) (intro.) and (2) (a), 150.20 (1), (1m) (j), (k), and (L), (2) (a) (intro.), 4., 10., 11., and 16., (3) (a) (intro.), and (4) (b) (intro.), and 150.35; and to **create** NR 150.20 (1) (Note), (1m) (k) (Note), and (m) to (y), and (2) (a) 20. to 27., relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

### Hearing Information

Date:

Time:

Location:

**Accessibility** (*not required by statute*)

(Examples:

1. Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by *(Date)*, by writing to \_\_\_\_\_, *(Mailing Address, Telephone)* (608) \_\_\_\_\_. Alternatively, you may contact *(the Agency Name or a named person)* TDD at (608) \_\_\_\_\_. The hearing facility is accessible to disabled users.

2. Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call \_\_\_\_\_ *(a named person)* at (608) \_\_\_\_\_ with specific information on your request at least 10 days before the date of the scheduled hearing.

3. Handicap access is available at the hearing location.)

### **Appearances at the Hearing and Submittal of Written Comments**

*(Here insert the information contained in the rule order regarding the submission of comments along with any additional information regarding personal appearances at the hearing.)*

The rule *(or rules if both emergency and permanent rules will be considered at the hearing)* may be reviewed and comments made at [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) (or the agency website) no later than \_\_\_\_\_.

### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

*[or]*

The proposed rule will have an effect on small businesses, as defined under s. 227.114 (1).

1. Description of the types of small businesses that will be affected by the rule:
2. Description of the proposed reporting, bookkeeping and other procedures required for compliance with the rule:
3. Description of the types of professional skills necessary for compliance with the rule:

**Agency Small Business Regulatory Coordinator** *(Here insert the name, email address, and telephone number.)*

*(Forward a copy of the complete rule filed with Legislative Council Rules Clearinghouse, including any economic impact analysis and fiscal estimate to LRB as separate files. All documents, including the economic impact analysis, must be Microsoft Word documents. PDFs cannot be accepted.)*

**NOTE:** This form may be accessed as a Word document on LRB's website at: [http://legis.wisconsin.gov/rsb/code/register\\_templates/](http://legis.wisconsin.gov/rsb/code/register_templates/).

**2.05 Thirty-day notice procedure. (1) GENERAL.** If the agency uses the procedure under s. 227.16 (2) (e), Stats., a public hearing may not be required.

**(2) SUBMISSION TO LRB.** If the agency intends to adopt a proposed rule without public hearing, it must send a written notice to LRB for publication in the Register. The notice must

include a copy of the proposed rule as submitted to the Legislative Council staff under s. 227.15 (1), Stats. The notice shall state that the proposed rule will be adopted without public hearing, unless a petition is received by the agency, within 30 days after publication of the notice, signed by one of the following:

- (a) Twenty-five natural persons who will be affected by the rule.
- (b) A municipality that will be affected by the rule.
- (c) An association that is representative of a farm, labor, business, or professional group that will be affected by the rule.

**NOTE:** The copy of the rule submitted to Legislative Council staff includes the economic impact analysis and any other documents submitted to the Legislative Council with the proposed rule. Submit to LRB as separate Word documents a notice document (see sub. (5), below, for the form of the notice document) the proposed rule, the economic impact analysis, and any other document submitted to Legislative Council staff.

**(3) PETITION RECEIVED.** If the agency receives a petition within 30 days after publication of the notice, it may not proceed with the proposed rule until it has given notice and held a public hearing under ss. 227.17 and 227.18, Stats. [See s. 2.02, Manual.]

**(4) PETITION NOT RECEIVED.** If the agency does not receive a petition within 30 days after publication of the notice, it may submit the proposed rule to the Governor for approval under s. 227.185, Stats.

**(5) FORM.** The following 30-day notice form is suggested:

#### **Notice of Rulemaking Without Public Hearing**

##### **Under s. 227.16 (2) (e), Stats.**

The (name of agency) will adopt the attached rule, without public hearing under the procedure set forth in s. 227.16 (2) (e), Stats., unless a petition is received by the agency within 30 days after publication of the notice, signed by any of the following:

- (a) Twenty-five natural persons who will be affected by the rule.
- (b) A municipality that will be affected by the rule.
- (c) An association that is representative of a farm, labor, business, or professional group that will be affected by the rule.

#### **Submittal of Written Comments**

*(Here insert the information contained in the rule order regarding the submission of comments.)*

The rule *(or rules if both emergency and permanent rules will be considered at the hearing)* may be reviewed and comments made at [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) (or the agency website) no later than \_\_\_\_\_.



## Initial Regulatory Flexibility Analysis

(1). The proposed rule will not have an effect on small businesses, as defined under s. 227.114

[or]

The proposed rule will have an effect on small businesses, as defined under s. 227.114 (1).

1. Description of the types of small businesses that will be affected by the rule:
2. Description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule:
3. Description of the types of professional skills necessary for compliance with the rule:

**Agency Small Business Regulatory Coordinator** (*Here insert the name, email address, and telephone number.*)

*(Forward a copy of the complete rule filed with Legislative Council Rules Clearinghouse, including any economic impact analysis and fiscal estimate to LRB as separate files. All documents, including the economic impact analysis, must be Microsoft Word documents. PDFs cannot be accepted.)*

**NOTE:** This form may be accessed as a Word document on LRB's website at: [http://legis.wisconsin.gov/rsb/code/register\\_templates/](http://legis.wisconsin.gov/rsb/code/register_templates/).

**2.06 Procedure for rules adopted under s. 227.16 (2) (b) or (d) or 227.23, Stats.** (a) Unlike rules adopted without hearing under the 30-day notice procedure under s. 227.16 (2) (e), Stats., there are no specific notice and procedural requirements for rules promulgated without notice: (1) to bring an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision under s. 227.16 (2) (b), Stats.; (2) as directed by JCRAR under s. 227.26 (2), Stats.; or (3) to promulgate a form imposing a requirement that meets the definition of a rule under s. 227.23, Stats. These rules are subject to all requirements applicable to a proposed rule filed with the Rules Clearinghouse under s. 227.14, Stats., and to the requirement that notice of the filing of the rule be published in the Register under s. 227.14 (4m), Stats. [ss. 2.01 and 3.01, Manual.]

(b) As with all rules, a place to submit comments and a deadline for submitting those comments is required as a part of the rule summary under s. 227.14 (2) (a) 8., Stats. Upon the expiration of the comment period and receipt of the written report from the Rules Clearinghouse, the agency may proceed with the final draft of the rule-making order for submission to the Governor for approval and legislative review. [s. 2.09, Manual.] At a minimum, it is suggested that in addition to the elements described in s. 2.01, Manual, the following be published in the Register:

1. The specific purpose of the rule-making.
2. The place where comments on the proposed rule should be submitted and the deadline for submitting those comments.
3. The text of the proposed rule in the form specified in s. 227.14, Stats., including the plain language analysis, fiscal estimate, and economic impact analysis, or an informative summary of the effect of the proposed rule and a description of how a copy of the full rule,

including the analysis, fiscal estimate, and economic impact analysis, may be obtained from the agency at no charge. In the case of forms promulgated under s. 227.23, Stats., the text of the rule is the form. If a proposed rule promulgates forms and other rule text, the hearing exception does not apply.

**2.07 Conduct of rule-making hearings. (1) PURPOSE OF HEARINGS.** A public hearing on a proposed rule is intended to elicit the greatest possible public participation in presenting facts, views, or arguments on the proposed rule. The hearing is not a mere formality.

**NOTE:** As stated in *HM Distributors of Milwaukee v. Dept. of Agri.*, 55 Wis. 2d 261, 268 (1972): “The purpose of a public hearing is to give interested parties not only a chance to be heard, but to have an influence in the final form of the regulations involved.”

**NOTE:** Agencies should hold rule-making hearings in facilities that are accessible to individuals with disabilities. Agencies should note in their rule-making notice of hearing where there is an accessible entrance for the building in which the hearing is to be held.

**(2) PROCEDURE.** (a) The procedure to be followed in conducting rule-making hearings is set forth in s. 227.18, Stats. This procedure does not supersede other statutory procedures relating to the specific agency or to the proposed rule or class of rules. The agency, through its authorized representative, must do all of the following:

1. Conduct the public hearing; explain the purpose of the hearing; and describe how testimony will be received.
2. Present, at the beginning of the hearing, a summary of the factual information on which the proposed rule is based, including information obtained from advisory committees, informal conferences, or consultations.
3. Afford each interested person an opportunity to present facts, views, or arguments in writing, whether or not there was an opportunity to present them orally.
4. Keep a record of the hearing that the agency deems desirable and feasible.

**NOTE:** A tape recording of a hearing is acceptable. [See *HM Distributors*, cited in the first note following s. 2.07 (1), Manual.]

(b) The agency may:

1. Limit oral presentations if the hearing would be unduly lengthened by reason of repetitious testimony.
2. Question or allow others present to question persons appearing.
3. Administer oaths or affirmations to any person appearing.
4. Continue or postpone the hearing to a time and place as it determines.

**(3) ABSENCE OF OFFICER OR QUORUM.** If the agency representative, or a quorum of the board or commission responsible for promulgating the proposed rule, is not present at the hearing, all of the following procedures apply:

(a) At the beginning of a hearing, the presiding officer must inform those present that any person who presents testimony at the hearing may present arguments to the agency officer, board, or commission prior to adoption of the proposed rule, if, at the hearing, the person makes such a request in writing to the presiding officer.

(b) If required by the agency, the arguments under par. (a), above, must be presented to the agency in writing. If oral arguments are permitted by the agency, the agency may impose reasonable limitations on the length and number of appearances to conserve time and preclude undue repetition.

(c) If a record of the hearing has been made, arguments before the agency under par. (a), above, are limited to the record of the hearing.

[s. 227.18 (3), Stats.]

**2.08 Incorporation of standards by reference. (1) GENERAL.** With the consent of the Attorney General, an agency may incorporate standards, established by technical societies and organizations of recognized national standing, by reference in a rule without reproduction of the standards in full. Consent for incorporation will be granted only if the rule is of limited public interest and the incorporated standards are readily available in published form or are available on optical disk or in another electronic format. The analysis to the rule must indicate that consent has been given. [s. 227.21 (2), Stats.]

**NOTE:** Incorporation of standards by reference may raise legal questions regarding improper delegation of authority by the rule-making agency. The issue arises when a rule incorporates external material adopted by an independent entity and changes to the material that may be adopted by that entity after the material is incorporated. This raises the question of whether the agency has exceeded its rule-making authority by delegating its authority to the external source to dictate revisions to the rules. A court would be unlikely to strike down the rule as an improper delegation of rule-making power if external material were incorporated into a rule without incorporating later changes. In that instance, the agency, and the Legislature through its review process, theoretically have examined all relevant external material and passed judgment on its value.

For a more detailed discussion of the concept of improper delegation as applied to legislative authority, see “Adoption by Reference” reproduced from the LRB *Bill Drafting Manual*, which may be accessed from the electronic version of this Manual at: <http://docs.legis.wisconsin.gov/document/adminruleprocedures>.

**(2) WRITTEN REQUEST.** If an agency desires to incorporate standards in a rule by reference, the agency must submit a written request to the Attorney General. The request, with a copy of the proposed rule and the standards, must contain information regarding all of the following:

(a) Whether the rule is of limited public interest.

(b) The extent of unwarranted expense if permission to incorporate the standards by reference is not granted.

(c) Whether the standards were established by a technical society or organization of recognized national standing.

(d) Whether the standards are readily available in published form or are available on optical disk or in another electronic format.

**NOTE:** A request for the Attorney General's consent should be sent to the Attorney General's office, Attn.: Administrator, Division of Legal Services, and mailed to: P.O. Box 7857, Madison, WI 53707-7857. The request should be initiated early in the rule-making process so that permission is granted prior to submitting the final draft proposed rules to the Governor under s. 227.185, Stats.

**(3) FORMAT.** (a) If the Attorney General consents to incorporating standards by reference in a rule, the reference is to the specific issue or issues of the publication containing the standards.

(b) The rule incorporating standards by reference must state how the incorporated material may be obtained. This is to be done in a note following the provision of the rule in which the reference occurs. The books and pamphlets containing the standards must be filed at the office of the agency and LRB.

**(4) AMENDMENTS.** If standards that have been adopted by reference are changed, an agency may adopt the changed version only with the written consent of the Attorney General and amendment of the affected rule as necessary to identify the standard adopted. The changes cannot be adopted prospectively or automatically.

**NOTE:** See the note to sub. (1), above.

**(5) SECONDARY STANDARDS.** If a standard to be incorporated by reference contains secondary standards, the agency must expressly delete or adopt the secondary standard by rule and make a separate request for incorporation of the secondary standards by reference.

**NOTE:** The question of incorporating by reference provisions of the U. S. Code or Code of Federal Regulations is discussed in 59 Atty. Gen. 31 and 68 Atty. Gen. 9. Factors affecting the incorporation decision are whether the federal material is substantive law, whether there is an attempt to incorporate future amendments of the federal material, whether the material is of limited public interest, and whether the material is readily available to the public. If an agency is planning to incorporate federal laws or regulations in the administrative code, it should first contact the attorney general's office for an opinion on the validity of its intended action.

**2.09 Submission of rules to the Governor and Legislature. (1) APPROVAL BY GOVERNOR.** After conducting any required hearing and making any necessary revisions, an agency must submit its proposed rule-making order in final draft form to the Governor for approval under s. 227.185, Stats. Upon receipt of the Governor's written approval, the agency may submit the

proposed rule to the Chief Clerk in each house of the Legislature as provided in s. 227.19, Stats. [See s. 3.02, Manual, regarding submission of proposed rules to the Legislature.]

**NOTE:** Final draft rules should be submitted for approval by the Governor to: [SBOAdminRules@wisapps.wi.gov](mailto:SBOAdminRules@wisapps.wi.gov). Executive Order #50 states that an agency generally must submit its proposed rule in final draft form to the Governor for approval within 30 calendar days after the public comment period.

(2) SUBMISSION TO PRESIDING OFFICERS. A statement that a proposed rule has been submitted to the presiding officers must be sent to LRB for publication in the Register. For rules for which the scope statement is submitted for publication on or after June 8, 2011 (the effective date of 2011 Wisconsin Act 21), insert a statement indicating the date of the Governor's written approval of the rule under s. 227.185, Stats. For rules for which the statement of scope was submitted for publication prior to June 8, 2011, insert the following:

This rule is not subject to s. 227.185, Stats. The statement of scope for this rule, published in Register \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), was sent to LRB prior to June 8, 2011.

**2.10 Form of rule-making order. (1) SAMPLE ORDER.** Under s. 227.14, Stats., an agency should adhere substantially to the following form in preparing a rule-making order for publication or distribution and in preparing an adopted rule for filing with LRB.

(ORDER) or (PROPOSED ORDER) of the (Agency)  
[Here insert the introductory clause under s. 1.02 (1), Manual.]  
Analysis prepared by (name of agency).  
(Here insert analysis.)  
Text of the rule.

This rule shall take effect on \_\_\_\_ [as provided in s. 227.22 (2) (intro.), Stats., \_\_\_\_], [pursuant to authority granted by s. 227.22 (2) (a) or (b), Stats.] [as an emergency rule. Facts constituting the emergency are as follows:]

[Use the alternative that fits the particular situation.]

Dated: \_\_\_\_\_ Agency: \_\_\_\_\_  
(signature and title of officer)

(2) ADDITIONAL REFERENCE. See ss. 1.02 and 1.04, Manual, for further discussion of rule-making orders.

**2.11 Filing rule. (1) CERTIFIED COPY.** (a) When promulgated, a certified copy of the rule is filed by the agency with LRB for incorporation in the Administrative Code and publication in the Register. No rule, including an emergency rule, is valid until the certified copy has been filed. [ss. 227.20 and 227.21, Stats.] Except as noted in s. 2.115, Manual, the rule is effective on the first day of the month commencing after publication. [s. 227.22, Stats.]

**NOTE:** Once the rule is filed, no changes may be made, except for the correction of obvious typographical errors that do not affect the substance of the rule under s. 35.17, Stats., or items that can be revised under s. 13.92 (4), Stats. LRB has a duty to publish the rules

**NOTE:** In addition to the certified copy of the rule, the rule must be submitted electronically as a Microsoft Word document. The electronic copy may be delivered prior to the filing of the certified copy and LRB requests that the electronic copy be e-mailed as soon as possible. The e-mail address is [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov).

STATE OF WISCONSIN )  
 ) SS  
(AGENCY)\_\_\_\_\_ )

and custodian of the official records, certify that the annexed rules, relating to \_\_\_\_\_ (subject), were duly approved and adopted by this \_\_\_\_\_ (board) \_\_\_\_\_ (department or) on \_\_\_\_\_ (date). \_\_\_\_\_ (commission)

IN TESTIMONY WHEREOF, I have hereunto  
set my hand and affixed the official  
seal\* of the (agency) at (office  
building or address) in the city of  
Madison, this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_(officer)

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(c) If the filed rule contains graphics, such as maps, that material is to be submitted electronically as JPEG, GIF, or TIFF files.

(d) When an agency files a rule that was submitted to the SBRRB under s. 227.14 (2g), Stats., the agency must include with the rule whichever of the following is applicable:

1. The final regulatory flexibility analysis or a summary of the analysis prepared under s. 227.19 (3), Stats., and a summary of the comments of the legislative standing committees.
2. The statement of the SBRRB's determination that the rule will not have a significant economic impact on a substantial number of small businesses, including the stated reason for the board's decision.

**(2) PUBLICATION OF RULES; DEADLINES.** Except in the case of an extremely large rule-making order or in times of unusual rule-filing volume, any rule received by LRB on or before the first day of a given month will be published in the end-of-month Register for that month, effective on the first day of the month following publication, unless a different future effective date is designated by the agency. Rules will be processed in the order received by LRB.

**NOTE:** LRB may accept rules after the first day of a month for publication at the end of that month. Contact Bruce Hoesly or Tami Dodge at LRB to make arrangements. Flexible deadlines and communication between agencies and LRB will enable LRB to accept new material up to the latest possible date, consistent with requirements of time for processing and publication of the material.

**(3) PUBLICATION OF RULES; PROCEDURE.** After rules are filed with LRB, the following occurs:

- (a) LRB staff incorporates the rule into the appropriate Administrative Code chapters.
- (b) A proof copy of each affected chapter and LRB's working copy of the rule order with questions, errors, changes, and corrections noted is sent to the agency for proofreading.
- (c) The proofed copy and the working copy of the rule order, with errors, comments, and responses to LRB questions and comments marked on the copy by the agency, is returned to LRB for corrections. A second proof copy is not sent to agencies for review unless specifically requested.
- (d) The final version of the chapter is published in the end-of month Register by means of a link to the updated chapter from the insertion instructions contained in that Register. The updated chapters are inserted into the Administrative Code on the first day of the month following publication in the Register.

**2.115 Effective date of rules.** A rule is effective on the first day of the month following publication of the affected Administrative Code Chapters in the Register, unless any of the following apply:

- (1) A statute sets a different effective date for the rule.
- (2) A later date is set by the agency in the adopted rule-making order.
- (3) The rule is adopted as an emergency rule under s. 227.24, Stats.

- (4) The rule has a significant economic impact on small business, as defined in s. 227.114 (1), Stats., in which case the rule as it applies to small businesses is effective no earlier than the first day of the third month beginning after publication. The determination of significant economic impact is made by the SBRRB under s. 227.14 (2g), Stats. Both the general effective date and the effective date for small businesses should be noted in the final order. In order to avoid confusion, an agency may wish to consider adopting the first day of the third month after publication as a single effective date for the rule.

**EXAMPLE:** A rule is published in the November Register. The rule has a significant impact on small business. The rule would be effective the following February 1.

[s. 227.22, Stats.]

**2.12 Emergency rules. (1) PURPOSE.** If preservation of the public peace, health, safety, or welfare necessitates placing a rule into effect prior to the time it could be effective if the agency were to comply with the notice, hearing, legislative review, and publication requirements, of the statutes, the agency may adopt that rule as an emergency rule. [s. 227.24, Stats.]

**(2) STATEMENT OF SCOPE.** In order to promulgate an emergency rule, an agency must first prepare a scope statement of the proposed emergency rule as provided in s. 227.135, Stats. [See s. 2.005, Manual.] As with proposed permanent rules, no state employee or official may perform any activity in connection with the drafting of a proposed emergency rule except for an activity necessary to prepare the scope statement of the proposed emergency rule until the Governor and the individual or body with policy-making powers over the subject matter of the proposed emergency rule approve the statement.

**NOTE:** Executive Order #50 provides that an agency that intends to promulgate both an emergency rule and a proposed permanent rule that are identical in substance may submit one scope statement indicating that intent.

**(3) APPROVAL OF RULE BY GOVERNOR. (a)** An agency must submit the proposed emergency rule in final draft form to the Governor for approval. An agency may not file an emergency rule with LRB and an emergency rule may not be published until the Governor approves the emergency rule in writing.

**(b)** Insert the following in the rule, prior to the introductory clause:

The statement of scope for this rule, SS \_\_\_\_, was approved by the Governor on \_\_\_\_ (date), published in Register \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), and approved by \_\_\_\_ (name of policy making body or individual for the agency as required by s. 227.135 (2), Stats.) on \_\_\_\_ (date).

This emergency rule was approved by the Governor on \_\_\_\_ (date).

**EXAMPLE:** The statement of scope for this rule, SS 001-11, was approved by the Governor on July 20, 2011, published in Register No. 668, on August 14, 2011, and approved by the Natural Resources Board on August 28, 2011. This emergency rule was approved by the Governor on September 15, 2011.



(4) PUBLICATION AND FILING. (a) An emergency rule takes effect upon publication in the official state newspaper or on a later date as specified in a statement published with the rule. An emergency rule remains in effect only for a period of 150 days unless it is extended under s. 227.24 (2), Stats. [see sub. (5), below], or is a rule promulgated under s. 186.235 (21), 215.02 (18), or 220.04 (8), Stats.

**NOTE:** An emergency rule need only be published one time to meet the publication requirement of s. 227.24, Stats. It is the agency's responsibility to contact the official state newspaper for publication of an emergency rule. The *Wisconsin State Journal* is currently the official state newspaper. See DOA purchasing bulletin 15-83330-05L. An agency may contact DOA's Bureau of Procurement, for assistance in preparing a purchase order for the publication of an emergency rule. The general telephone for the bureau is (608) 266-2605. DOA has prepared a form [DOA 3539] that may be used when sending material for legal notices including emergency rules. Forms may be downloaded from the Bureau of Procurement's website at: <http://vendornet.state.wi.us/vendornet/doaforms/doafrm.ASP>. The Bureau of Procurement suggests that all orders be faxed to the *Wisconsin State Journal* [(608) 252-6333].

(b) In addition to publication, a certified copy of the emergency rule must be filed with LRB in order for the rule to be valid [s. 227.20 (1), Stats.]. LRB inserts in the notice section of each issue of the Register a brief description of emergency rules currently in effect and publishes the rule in its entirety and the rule's fiscal estimate in the first Register containing the brief description of the rule and separately on its Internet site.

**NOTE:** In addition to the certified copy of the rule, LRB requires an electronic copy of the rule and fiscal estimate as an attachment via e-mail. The electronic copy may be delivered prior to the filing of the certified copy. LRB requests that the electronic copy be e-mailed as soon as possible. The e-mail address is [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov).

(c) When an emergency rule is adopted, the agency must mail a copy of the rule, the statement of emergency finding or a statement that the rule is promulgated at the direction of JCRAR under s. 227.26 (2) (b), Stats., and the rule's fiscal estimate, to each member of the Legislature and to the Chief Clerk of each house of the Legislature. The required mailing may be by e-mail. The agency must take other steps it considers feasible to make the rule known to persons who will be affected by it.

(d) If the emergency rule may have an economic impact on small business as defined in s. 227.114 (1), Stats., the agency must submit a copy of the emergency rule to the SBRRB on the same day it sends copies to the Legislature.

(5) EXTENSION OF EMERGENCY RULES. (a) An agency may petition JCRAR for extensions of the effective period of an emergency rule or part of an emergency rule. The committee may extend a rule's effective period for a period specified by the committee, not to exceed 60 days. Any number of extensions may be granted, but the total period for all extensions may not exceed

120 days. In making the request for an extension, the agency must provide the committee with all of the following:

1. Evidence of a threat to the public peace, health, safety, or welfare that can be avoided only by extending the emergency rule.
2. Evidence that a permanent rule cannot be in effect on or before the date the emergency rule expires.

**NOTE:** Contact JCRAR co-chair staff for deadlines for extension requests.

**NOTE:** The Attorney General has stated that an administrative agency cannot perpetuate an emergency rule by refiling the identical rule in accordance with s. 227.24, Stats., before or immediately after the effective period. [See 62 Atty. Gen. 305 (1973).]

(b) 1. An agency's request for extension of an emergency rule must be in writing and include a copy of the emergency rule and a cover letter with the expiration date and the number of days requested for extension.

2. Under s. 227.24 (2) (am), Stats., the extension request must be made to JCRAR no later than 30 days before the initial expiration date of the emergency rule.

3. Whenever JCRAR extends all or part of an emergency rule, it must file a statement of its action with the agency and LRB.

**(6) PUBLIC HEARING.** (a) Except as provided in par. (b), below, an agency is required to hold a public hearing on an emergency rule within 45 days after the adoption of the emergency rule. [See s. 227.24 (4), Stats.]

**NOTE:** A notice of proposed rule-making under s. 227.16 (2) (e), Stats., described in s. 2.05, Manual, does not meet the requirement of a public hearing under s. 227.24 (4), Stats.

(b) If the agency intends to promulgate an emergency rule as a permanent rule and submits the proposed permanent rule to the Rules Clearinghouse within 45 days of the adoption of the emergency rule, the agency must hold the public hearing on the emergency rule and permanent rule within 90 days of the adoption of the emergency rule or within 30 days after receiving the Rules Clearinghouse report on the rule, whichever occurs later.

(c) An agency must file a notice of hearing on an emergency rule in the manner described in s. 2.04, Manual. An agency may combine the notice of hearing for an emergency rule and corresponding permanent rule in a single document if the timing and content requirements for each rule are met.

**NOTE:** In order to prevent a gap in coverage of a rule in transition from emergency rule to a permanent rule, it is necessary to commence the procedure for adoption of permanent rules at the same time or before the emergency rules are effective.

**(7) FORM.** (a) The order adopting emergency rules must include a paragraph in substantially the following form:

### FINDING OF EMERGENCY

The (agency) finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

[Here insert information to justify use of emergency rule procedure.]

OR

### EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by (statute section), or (SECTION in a Wisconsin Act) provides an exemption from a finding of emergency for the adoption of the rule.

(b) Under s. 227.24 (1) (e) 1m., Stats., the rule summary must be printed with the text of the rule when it is published. The contents of the summary are set forth in s. 1.02 (2), Manual. Also, a fiscal estimate must be prepared, which the agency must mail to each member of the Legislature within 10 days after publication.

**2.13 Petition for rules. (1) WHO MAY PETITION.** Under s. 227.12, Stats., a municipality, an association that is representative of a farm, labor, business, or professional group, or five or more persons having an interest in a rule may petition an agency requesting it to promulgate a rule.

**(2) FORM OF PETITION.** A petition must clearly and concisely state all of the following:

- (a) The substance or nature of the rule-making requested.
- (b) The reason for the request.
- (c) The petitioner's interest in the requested rule.
- (d) A reference to the agency's statutory authority to promulgate the requested rule.

**(3) AGENCY RESPONSE.** (a) Within a reasonable period of time after receiving a petition for rules, an agency must either deny the petition in writing or proceed with the requested rule-making.

(b) If the agency denies the petition, it must promptly notify the petitioner of the denial, including the reason for the denial.

(c) If the agency proceeds with the requested rule-making, the procedures described in this Part of the Manual must be followed.

**2.14 History notes.** LRB prepares a history note for each rule section published in the Administrative Code, as follows:

**(1) DATE AND NUMBER OF PUBLICATION.** Each rule, as it was originally filed and printed under Ch. 221, Laws of 1955, which became part of ch. 227, Stats., was dated "1-2-56." Any rule revised or created subsequent to the original printing date is followed by a history note indicating the date and number of the Register in which it was published and the date on which the amendment or the rule became effective. The absence of a history note at the end of a section means that the rule has remained unchanged since the original printing in 1956. The date line at

the bottom of a page indicates the month and Register number in which the page was last published in the Register.

**(2) ABBREVIATIONS.** The following abbreviations are used in the history notes: “CR” is used for Clearinghouse Rules; “cr.” is used for “create”; “am.” for “amend”; “cons” for “consolidate”; “recr.” for “recreate”; “renum.” for “renumber”; “r.” for “repeal”; “emerg.” for “emergency”; and “eff.” for “effective.”

**(3) CLEARINGHOUSE NUMBER.** Starting in 2001, the Clearinghouse Rule number designation has been added to history notes. This number identifies the specific rule order containing the changes noted and facilitates online searches.

**2.15 Indexing agency rules.** LRB will review agency rules for entries in a general index to the Administrative Code.

## PART 3

### RULES REVIEW PROCEDURE

**3.01 Submission of proposed rules to Legislative Council staff. (1) WHEN SUBMITTED.** An agency is required to submit proposed rules to the Rules Clearinghouse for review prior to any public hearing on the proposed rules, or, if no hearing is required, prior to submission to the Governor for review. A public hearing on a proposed rule may not be held until the agency receives the report described in sub. (3) from the Rules Clearinghouse or until after the Rules Clearinghouse's initial review period of 20 working days, whichever comes first. The notice must be published in the Register at least 10 calendar days prior to the date set for the public hearing. However, an agency may, before receiving the Rules Clearinghouse report, act to schedule the date of a public hearing. [s. 227.15 (1), Stats.]

**NOTE:** Under s. 227.14 (6) (c), Stats., a proposed rule is considered withdrawn on December 31 of the 4th year after the year in which it is submitted for Rules Clearinghouse review unless it is filed with LRB under s. 227.20 (1), Stats., or withdrawn by the agency before that date. [See s. 3.05, Manual.]

**NOTE:** A proposed rule should be submitted by *both* of the following methods to the Rules Clearinghouse: (1) in paper format to the Legislative Council, One East Main Street, Suite 401, Madison, WI; *and* (2) in electronic format **as a Word document** to "Clearing.House@legis.wisconsin.gov". The period for Rules Clearinghouse review is 20 working days following the receipt of the *paper copy* of the proposed rule.

**(2) AGENCY RESPONSIBILITIES.** Proposed rules must be drafted in accordance with s. 227.14, Stats., and follow the format and drafting style of bills prepared for the Legislature and the drafting guidelines set forth in this Manual. [s. 227.14 (1), Stats.] Proposed rules must be accompanied by all of the following information:

(a) The citation of any federal statutes or regulations that require adoption of the proposed rules or are relevant to the substance of the proposed rules.

(b) The citation of any court decision directly relevant to the proposed rules.

(c) The name and telephone number of all of the following:

1. The agency person to be contacted if there are substantive questions on the rules.
2. The agency person responsible for the agency's internal processing of the rules.

**NOTE:** When there is a change in the agency person who is responsible for processing rules, the Clearinghouse and LRB should be notified by an e-mail message sent to [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov) and [Admin-Code-Register@legis.wi.gov](mailto:Admin-Code-Register@legis.wi.gov).

**(3) LEGISLATIVE COUNCIL STAFF RESPONSIBILITIES.** (a) Under s. 227.15, Stats., the Legislative Council staff acts as a clearinghouse for rule drafting and cooperates with an agency and LRB to do all of the following:

1. Review the statutory authority under which the agency intends to promulgate the rule.
2. Ensure that the procedures for the promulgation of a rule required by ch. 227, Stats., are followed.
3. Review proposed rules for form, style, and placement in the Administrative Code.
4. Review proposed rules to avoid conflict with or duplication of existing rules.
5. Review proposed rules to provide adequate references to related statutes, rules, and forms.
6. Review proposed rules for clarity, grammar, and punctuation and to ensure plain language.
7. Review proposed rules to determine potential conflicts and to make comparisons with related federal statutes and regulations.
8. Review proposed rules for compliance with the permit action deadline requirements of s. 227.116, Stats.
9. Streamline and simplify the rule-making process. [s. 227.15 (2), Stats.]

(b) The period for Rules Clearinghouse review is 20 working days following the receipt of the ***paper copy*** of the proposed rule. With the consent of the Director of the Legislative Council staff, the review period may be extended for an additional 20 working days. [s. 227.15 (1), Stats.]

(c) The Rules Clearinghouse assigns a Clearinghouse Rule number to the proposed rule, records the submission of the rules in the Bulletin of Proceedings of the Wisconsin Legislature and prepares two numbered rule jackets, one for each house. When the review of proposed rules is completed, the Rules Clearinghouse returns the rules, the rule jackets, and a Clearinghouse Report containing the results of the review under par. (a) to the agency.

**3.02 Submission of proposed rules to Legislature. (1) WHEN SUBMITTED.** Following approval of the Governor under s. 227.185, Stats., an agency submits a proposed rule to the Legislature by notifying the Chief Clerk of each house that the proposed rule is in final draft form. [s. 227.19 (2), Stats.] Each Chief Clerk should receive from the agency the appropriate rule jacket prepared under s. 3.01 (3) (c), Manual. Prior to transmittal to the Chief Clerks, the agency records on each rule jacket the date of any agency public hearing held regarding the proposed rule. If a public hearing is not required, the agency records this fact on each rule jacket. [See also s. 2.09, Manual.]

**NOTE:** An agency may not divide a rule into two separate rule-making orders following receipt of the Clearinghouse Report. The Clearinghouse rule number and rule jackets are unique to the originally submitted rule-making order and form the basis of the system used to record, handle, and monitor statutory deadlines on final draft rules.

**NOTE:** It is helpful if the submission of rules that are based on a specific Act include a reference to both the Act number and bill number.

**(2) ITEMS INCLUDED IN SUBMISSION.** The notification to the Chief Clerks must be in triplicate and include, as required in s. 227.19 (3), Stats., all of the following:

- (a) The proposed rule.
- (b) The rule summary. [s. 227.14 (2), Stats.; and s. 1.02 (2), Manual.]
- (c) Reference to applicable forms. [s. 227.14 (3), Stats.]
- (d) The fiscal estimate. [s. 227.14 (4), Stats.]
- (e) Any statement, suggested changes, or other material submitted to the agency by the SBRRB. [s. 227.14 (2g), Stats.]
- (f) A copy of any economic impact analysis prepared by the agency. [s. 227.137 (2), Stats.]
- (g) A copy of any revised economic impact analysis prepared by the agency. [s. 227.137 (4), Stats.]
- (h) A copy of any report prepared by DOA for a proposed rule with \$20,000,000 or more in implementation and compliance costs. [s. 227.137 (6), Stats.]
- (i) A copy of any energy impact report received from the Public Service Commission. [s. 227.117 (2), Stats.]
- (j) A copy of the Rules Clearinghouse Report. [s. 227.15 (2), Stats.]
- (k) A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes. [s. 227.19 (3) (a), Stats.]
- (L) A summary of public comments to the proposed rule and the agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing. [s. 227.19 (3) (b), Stats.]
- (m) A list of the persons who appeared or registered for or against the proposed rule at a public hearing. [s. 227.19 (3) (c), Stats.]
- (n) Any changes to the rule summary or the fiscal estimate. [s. 227.19 (3) (cm), Stats.]
- (o) A response to the recommendations in the Rules Clearinghouse Report indicating acceptance of the recommendations in whole, acceptance of the recommendations in part, rejection of the recommendations in whole, rejection of the recommendations in part, and the specific reason for rejecting any recommendation. [s. 227.19 (3) (d), Stats.]
- (p) For a proposed rule that will have an effect on small businesses, a final regulatory flexibility analysis that contains the information in s. 227.19 (3) (e), Stats. A final regulatory flexibility analysis is not required for a proposed rule if the SBRRB determines that the rule will not have a significant economic impact on a substantial number of small businesses. [s. 227.19 (3m), Stats.]
- (q) If an energy impact report regarding the proposed rule was submitted, an explanation of the changes, if any, that were made in the proposed rule in response to that report. [s. 227.19 (3) (f), Stats.]

(r) If applicable, the report from DOA for a proposed rule that directly or substantially affects the development, construction, cost, or availability of housing in this state. [s. 227.115, Stats.]

(s) A response to any report prepared by the SBRRB. [s. 227.19 (3) (h), Stats.]

**NOTE:** An agency must submit **electronically** a copy of the notification to the Chief Clerks and the agency report to the Legislature to the Rules Clearinghouse at [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov).

(3) **PUBLICATION OF NOTICE.** The agency must place a notice in the Register stating that a proposed rule has been submitted to the Chief Clerk of each house of the Legislature. [s. 227.19 (2), Stats.] The notice must include the Clearinghouse number, introductory clause, and the date of submittal to the Chief Clerks. [See also s. 2.09 (2), Manual.]

(4) **PLACE OF DELIVERY.** Clearinghouse rule jackets should be delivered to the following offices:

<u>Office</u>	<u>Location</u>	<u>Recipient</u>
Senate Chief Clerk	Room B20 Southeast, State Capitol	Jeff Renk
Assembly Chief Clerk	17 West Main Street, Room 401	Kay Inabnet

**3.03 Legislative review. (1) REFERRAL TO COMMITTEES.** Each presiding officer must, within 10 working days of receipt by the Legislature for review, direct the Chief Clerk to refer the rule jackets to one standing committee of the particular house. If submittal to the Chief Clerks takes place after the last day of the Legislature's final general-business floorperiod in the biennial session, the rules shall be considered received on the first day of the next regular session of the Legislature for the purposes of determining the running of time periods for legislative committee review described in this section, unless the presiding officers of both houses refer the rule jackets before the first day of the next regular session. [s. 227.19 (2), Stats.]

(2) **COMMITTEE REVIEW.** (a) Upon receipt of notice that a proposed rule has been referred to a committee, the chairperson of the committee shall notify, in writing, each committee member of the referral. [s. 227.19 (4) (a), Stats.]

(b) The committee review period lasts for 30 days from the date the rule jacket is referred. If, within the 30-day period, a committee takes either of the following actions, the committee review period is extended for an additional 30 days: (1) requests in writing that the agency meet with the committee to review the proposed rule; or (2) publishes or posts notice that the committee will hold a meeting or hearing to review the proposed rule and immediately sends a copy of the notice to the agency. This action does not extend the review period of the committee in the other house. [s. 227.19 (4) (b), Stats.]

(bm) If a proposed rule is received by the Chief Clerks after the last day of the Legislature's final general-business floorperiod in the biennial session and is referred for committee review before the first day of the next regular session of the Legislature, the committee review period extends to the date that the next Legislature convenes. If a committee has not concluded its jurisdiction before the next Legislature convenes, the presiding officer of the appropriate house shall re-refer the proposed rule in the manner specified in sub. (1). [s. 227.19 (4) (b) 1m. and 6., Stats.]



(c) A committee may waive its jurisdiction over a proposed rule by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee's jurisdiction. This action does not waive the jurisdiction of the committee in the other house. [s. 227.19 (4) (c), Stats.]

(d) 1. If a committee, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider modifications, the review period for both committees is extended either to the 10th working day following receipt by the committees of the modified proposed rule or a written statement to the committees that the agency will not make modifications or to the expiration of the initial or extended committee review period, whichever is later. There is no limit either on the number of modification agreements that may be entered into or on the time within which modifications may be made. Upon receipt of a modification or a written statement that an agency will not make modifications, the chairperson of the committee should notify each committee member of the receipt of the modification or written statement. [s. 227.19 (4) (b) 2., Stats.]

2. If a committee in one house requests modifications, this does not preclude the committee in the other house, to which the proposed rule was referred, from taking action on the proposed rule. Since an agency is not required to comply with a request for modifications, if both committees recommend modifications that differ from each other, an agency may determine which of the recommendations to follow. However, as described in subd. 1., both committees have an opportunity to review any modifications that are submitted.

(e) On its own initiative, an agency may submit germane modifications to a proposed rule to a standing committee during the review period. If the modifications are submitted within the final 10 days of the review period, the review period for both committees is extended for 10 working days. If an agency modification is submitted to a committee after the committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house is revived for 10 working days. An agency also may modify a proposed rule following standing committee review, if the modification is germane to the subject matter of the proposed rule. If this is done, the modified rule must be resubmitted to the Chief Clerk in each house of the Legislature for referral and the normal committee review. [s. 227.19 (4) (b) 3. and 4., Stats.]

**NOTE:** Whenever a modification of a rule is made, an agency must submit electronically a copy of the modification to the Rules Clearinghouse at [Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov).

(f) A committee may object to a proposed rule, or part of a proposed rule, only for one or more of the following reasons in s. 227.19 (4) (d), Stats.:

1. An absence of statutory authority.
2. An emergency relating to public health, safety, or welfare.
3. Failure to comply with legislative intent.
4. Being contrary to state law.
5. A change in circumstances since enactment of the earliest law upon which the rule is based.
6. Being arbitrary and capricious or imposing an undue hardship.

7. For a proposed rule of the Department of Safety and Professional Services that establishes standards for the construction of a dwelling, an increase in the cost of constructing or remodeling a dwelling by more than \$1,000.

(g) If a committee objects, the committee chairperson must immediately notify the chairperson of the committee in the other house to which the proposed rule was referred. The committee in the other house may then take no further action other than also to object. [s. 227.19 (4) (b) 5., Stats.]

**NOTE:** Since agencies are not routinely notified when committee review periods end, an agency should review the history of the rule on the legislative website, which will indicate when committee review periods end, or contact the staff to the chairpersons of the committees or the Chief Clerk of either house.

**(3) REFERRAL TO JCRAR.** (a) When a committee's jurisdiction over a proposed rule is concluded, the rule is referred to JCRAR. The review period for JCRAR is 30 days, but may be extended for an additional 30 days as in the case of an initial reviewing committee. If a proposed rule received an objection from a standing committee, JCRAR is required to take executive action within its review period and may either nonconcur in an objection, object to the proposed rule, or seek rule modifications as in the case of a committee during initial review of the proposed rule. JCRAR may take executive action within its review period with respect to any proposed rule, or part of a proposed rule, to which no committee objected. JCRAR may object to a proposed rule only for one or more of the reasons listed under sub. (2) (f). [s. 227.19 (5) (a) and (b), Stats.]

(b) An agency may not promulgate a rule until JCRAR nonconcurs in the objection of the committee, concurs in the approval of the committee, otherwise approves the proposed rule, or waives its jurisdiction over the proposed rule; until the expiration of the review period if no committee has objected to the proposed rule; or until a bill that sustains an objection fails to be enacted. [s. 227.19 (5) (c), Stats.]

(c) If a portion of a proposed rule receives an objection, the portion that receives no objection may be promulgated. [s. 227.19 (5) (d), Stats.]

**3.04 Legislative consideration of rules objection.** (1) If JCRAR objects to a proposed rule, it shall, within 30 days, meet and take executive action regarding introduction of a bill in each house to support the objection. [s. 227.19 (5) (e), Stats.]

(2) If the bill is introduced on or after February 1 of an even-numbered year and before the next regular session of the Legislature commences, JCRAR must reintroduce the bills on the first day of the next regular session of the Legislature, unless either house adversely disposes of either bill. Adverse disposition of a bill occurs when one house has voted in any of the following ways:

- (a) To indefinitely postpone the bill.
- (b) To nonconcur in the bill.
- (c) Against ordering the bill engrossed.
- (d) Against ordering the bill to a third reading.
- (e) Against passage.

(f) Against concurrence.

[s. 227.19 (5) (g), Stats.]

(3) After introduction, the bills are referred to an appropriate committee in each house of the Legislature, to the calendar scheduling committee, or directly to the calendar. If the committees make no report within 30 days after referral, the bills are considered reported without recommendation. No later than 40 days after referral, the bills must be placed on the calendars of the respective houses of the Legislature according to the rules of the respective houses governing the placement of proposals on calendars. A bill received in the second house after passage in the first house must be referred, reported, and placed on the calendar in the same manner as an original bill introduced as described in this subsection. [s. 227.19 (6) (b), Stats.]

(4) If both bills required by the law are defeated or fail to be enacted in any other manner during a regular session, then the rule may be promulgated. If either bill becomes law, the agency may not promulgate the proposed rule, or part of the proposed rule, that was objected to unless a later law specifically authorizes promulgation of the proposed rule. [s. 227.19 (5) (f), Stats.]

(5) Like other bills, the bills introduced by JCRAR are subject to signature or veto by the Governor.

**3.05 Withdrawal or recall of rules. (1) WITHDRAWAL OF RULES.** An agency may withdraw a proposed rule from the rule review process by notifying the Chief Clerk of each house of the Legislature and the Rules Clearinghouse in writing of its intention not to promulgate the rule. A proposed rule is deemed withdrawn on December 31 of the fourth year after the year in which it is submitted to the Rules Clearinghouse, unless filed with LRB or withdrawn by the agency by that date. After withdrawing a proposed rule, an agency that decides to promulgate the proposed rule must begin the process over with a new scope statement and rule-making order. [Also see the first note following s. 3.01 (1), Manual.] [s. 227.14 (6), Stats.]

(2) **RECALL OF RULES.** An agency may, during a standing committee review period, recall a proposed rule from the Chief Clerk of each house of the Legislature. If the agency decides to continue the rule-making process for the proposed rule, the agency shall resubmit it, either in the recalled form or with one or more germane modifications, to the Chief Clerk of each house and the committee review period begins again. [s. 227.19 (4) (b) 3m., Stats.]

**3.06 Treatment of rules in effect by JCRAR; other powers. (1) POWERS OF JCRAR.** (a) *Rule suspension.* JCRAR may suspend a rule, including an emergency rule, at any time following promulgation after receiving testimony at a public hearing. JCRAR may suspend a rule only for one or more of the following reasons:

1. An absence of statutory authority.
2. An emergency relating to public health, safety, or welfare.
3. Failure to comply with legislative intent.
4. Being contrary to state law.
5. A change of circumstances since enactment of the earliest law upon which the rule is based.
6. Being arbitrary and capricious or imposes an undue hardship.

7. For a proposed rule of the Department of Safety and Professional Services that establishes standards for the construction of a dwelling, an increase in the cost of constructing or remodeling a dwelling by more than \$1,000.

[s. 227.26 (2) (d), Stats.]

(b) *Identification of policy or interpretation as a rule.* If JCRAR determines that a statement of policy or an interpretation of a statute is a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days of JCRAR's action. [s. 227.26 (2) (b), Stats.]

(c) *Hearings.* By a vote of a majority of its members, JCRAR may require any agency issuing rules to hold a public hearing in respect to general recommendations of JCRAR and to report its actions to JCRAR within a time specified by JCRAR. The agency hearing shall be held not more than 60 days after receipt of notice that JCRAR is requiring the agency to hold a hearing. [s. 227.26 (3), Stats.]

**(2) ACTION ON SUSPENDED RULE.** (a) Within 30 days of its suspension of a rule, JCRAR must meet and take executive action regarding the introduction, in each house of the Legislature, of a bill to support the suspension. [s. 227.26 (2) (f), Stats.]

(b) If the bills required under par. (a) are introduced on or after February 1 of an even-numbered year and before the next regular session of the Legislature commences, unless either house adversely disposes of either bill, JCRAR shall reintroduce the bills on the first day of the next regular session of the Legislature. Adverse disposition occurs when one house has voted in any of the following ways:

1. To indefinitely postpone the bill.
2. To nonconcur in the bill.
3. Against ordering the bill engrossed.
4. Against ordering the bill to a third reading.
5. Against passage.
6. Against concurrence.

[s. 227.26 (2) (j), Stats.]

(c) After introduction, the bills are to be referred to an appropriate committee in each house of the Legislature, to the calendar scheduling committee, or directly to the calendar. If the committees make no report within 30 days after referral, the bills are considered reported without recommendation. No later than 40 days after referral, the bills must be placed on the calendars of the respective houses of the Legislature according to the rules of the respective houses governing the placement of proposals on calendars. A bill received in the second house after passage in the first house must be referred, reported, and placed on the calendar in the same manner as an original bill introduced as described in this paragraph. [s. 227.26 (2) (h), Stats.]

(d) If both bills are defeated or fail to be enacted in any other manner during a regular session, then the rule stands and JCRAR may not suspend it again. If either bill becomes law, the suspended rule is repealed and may not be promulgated again unless a later law specifically authorizes such action. [s. 227.26 (2) (i), Stats.]

(e) Like other bills, the bills introduced by JCRAR are subject to signature or veto by the Governor.

**3.07 Time periods.** Unless otherwise provided, all time periods refer to calendar days.

SG:JKR:BH:jal



**APPENDIX**

**FLOW CHART OF RULE PROMULGATION PROCESS**

# Rule Promulgation Process

*Rule Preparation Through Legislative Standing Committee Review*

Agency decision to promulgate rules, including: (1) the preparation, approval by the Governor, publication, and approval by the agency head, of a scope statement that describes the rules' objectives, current and proposed policies, policy alternatives, statutory authority, and the resources necessary to develop the rules; and (2) preparation of a draft of the rules that meets format standards suggested by the Rules Clearinghouse and the LRB.

Prior to public hearing or legislative review, all proposed rules submitted to Rules Clearinghouse for advisory, technical review. Review must take place within 20 working days, unless period extended for additional 20 working days by Director of Legislative Council Staff. Rules returned to agency for processing.

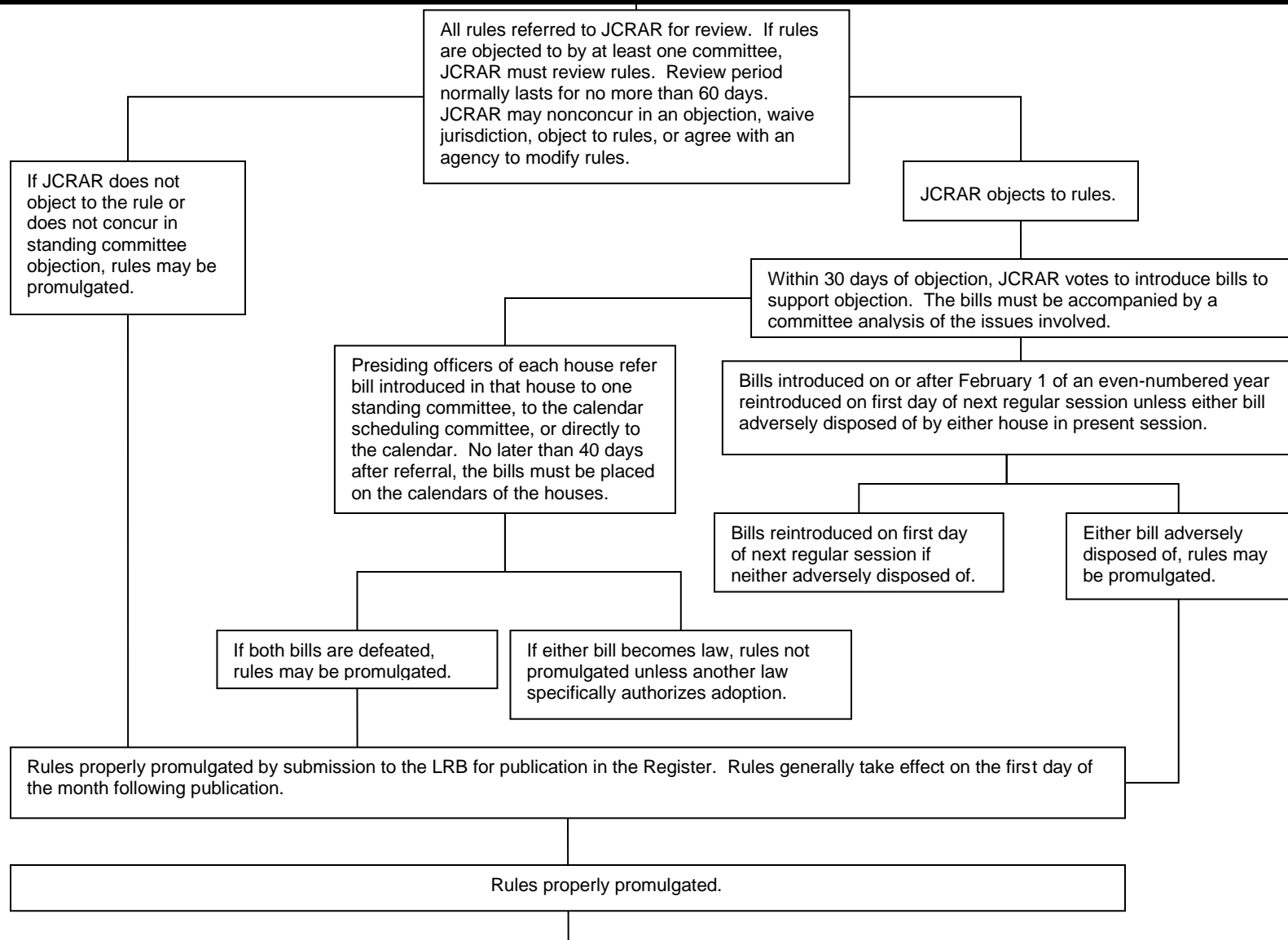
Agency notifies the public of a public hearing on the proposed rules and conducts a public hearing, unless notice and hearing are not required under the statutes.

After approval by the Governor, rules in final draft form submitted to the Chief Clerk in each house of the Legislature along with report containing justification for rules, agency reaction to Rules Clearinghouse report, agency reaction to any public testimony, and statement of public appearances and registrations for or against the rules at any public hearing. Rules submitted after the last day of the Legislature's final general-business floor period in the biennial session are considered to be received on the first day of the next regular legislative session unless the presiding officers of both houses direct referral to committees before that date.

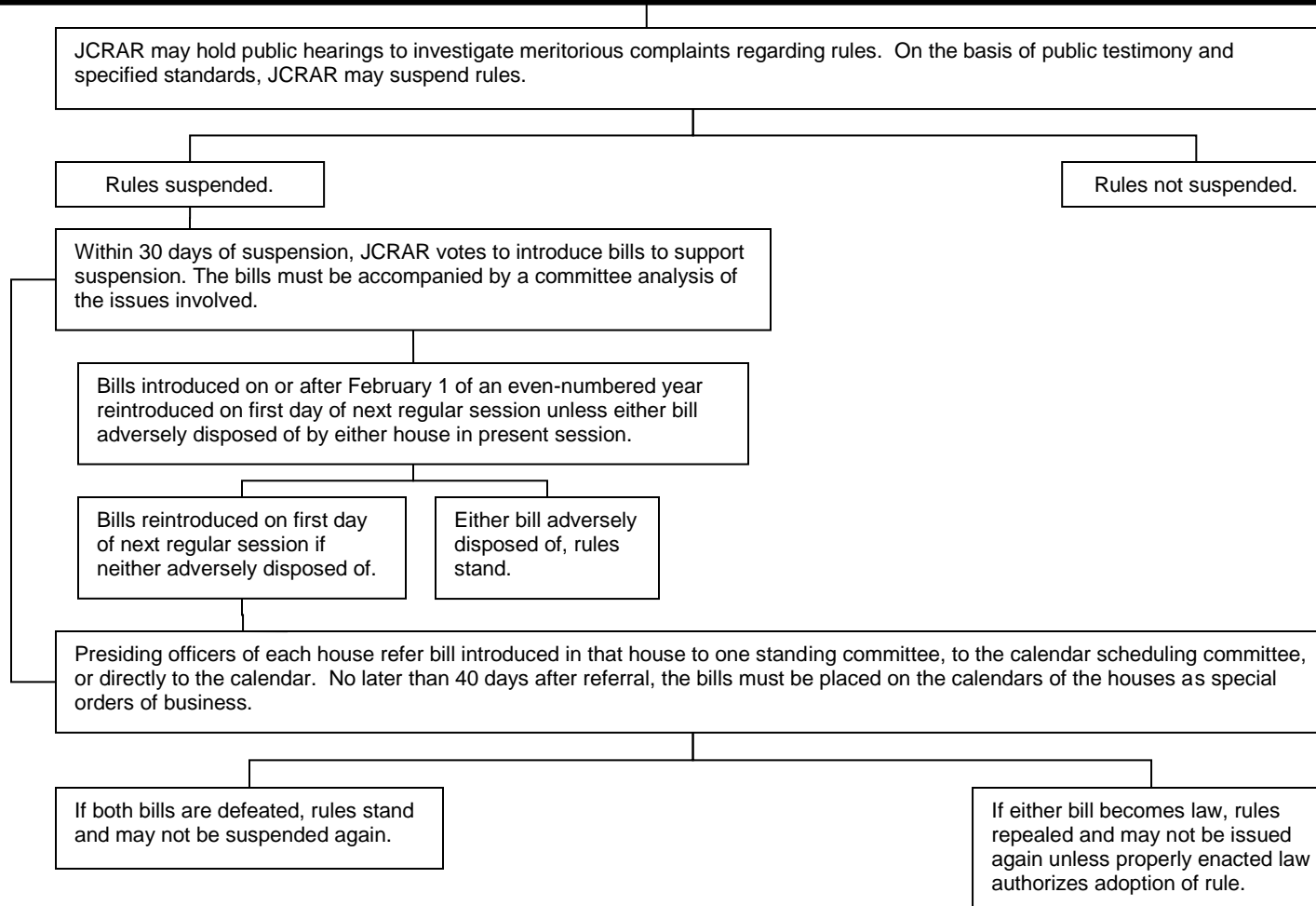
Within 10 working days, each presiding officer directs the Chief Clerk to refer the rules and report to one committee. Unless objected to by at least one committee, rule review period normally may last for no more than 60 days. If a committee and agency agree to modifications, then the review period is extended to the 10th working day following committee receipt of modified rules. An agency may submit germane modifications, on its own initiative, during or following a committee review period.



# Rule Promulgation Process



# Rule Promulgation Process



Prepared by:

Wisconsin Legislative Council Staff  
December 2014